

**CALIFORNIA BOARD OF ACCOUNTANCY**

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**DEPARTMENT OF CONSUMER AFFAIRS  
 CALIFORNIA BOARD OF ACCOUNTANCY**

**FINAL**

**MINUTES OF THE  
 November 15-16, 2007  
 BOARD MEETING**

Sheraton Gateway Hotel  
 600 Airport Boulevard  
 Burlingame, CA 94010  
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**I. Call to Order.**

President David Swartz called the meeting to order at 2:32 p.m. on Thursday, November 15, 2007, at the Sheraton Gateway Hotel and the Board heard Agenda Items III, IV, V, VI, XIII.B., XIII.C., and XIII.D. The meeting adjourned at 5:00 p.m. Mr. Swartz again called the meeting to order at 9:07 a.m. on Friday, November 16, 2007, and the Board and ALJ Diane Schneider heard Agenda Item XII.A. The Board convened into closed session at 10:15 a.m. to deliberate and also to consider Agenda Items XII.B-G. The meeting reconvened into open session at 10:50 a.m. and adjourned at 12:20 p.m.

Board MembersNovember 15, 2007

|                                      |                        |
|--------------------------------------|------------------------|
| David Swartz, President              | 2:32 p.m. to 5:00 p.m. |
| Donald Driftmier, Vice President     | 2:32 p.m. to 5:00 p.m. |
| Robert Petersen, Secretary-Treasurer | 2:32 p.m. to 5:00 p.m. |
| Sally Anderson                       | 2:32 p.m. to 5:00 p.m. |
| Rudy Bermúdez                        | 2:32 p.m. to 5:00 p.m. |
| Richard Charney                      | 2:32 p.m. to 5:00 p.m. |
| Angela Chi                           | 2:32 p.m. to 5:00 p.m. |
| Sally Flowers                        | Absent                 |
| Lorraine Hariton                     | 2:32 p.m. to 5:00 p.m. |
| Leslie LaManna                       | 2:32 p.m. to 5:00 p.m. |
| Bill MacAloney                       | 2:32 p.m. to 5:00 p.m. |
| Marshal Oldman                       | Absent                 |
| Manuel Ramirez                       | 2:32 p.m. to 5:00 p.m. |
| Lenora Taylor                        | 2:32 p.m. to 5:00 p.m. |
| Stuart Waldman                       | 2:32 p.m. to 5:00 p.m. |

Board MembersNovember 16, 2007

|                                  |                         |
|----------------------------------|-------------------------|
| David Swartz, President          | 9:07 a.m. to 12:20 p.m. |
| Donald Driftmier, Vice President | 9:07 a.m. to 12:20 p.m. |

|                                      |                         |
|--------------------------------------|-------------------------|
| Robert Petersen, Secretary-Treasurer | 9:07 a.m. to 12:20 p.m. |
| Sally Anderson                       | 9:07 a.m. to 12:20 p.m. |
| Rudy Bermúdez                        | 9:07 a.m. to 12:20 p.m. |
| Richard Charney                      | 9:07 a.m. to 12:20 p.m. |
| Angela Chi                           | 9:07 a.m. to 12:20 p.m. |
| Sally Flowers                        | Absent                  |
| Lorraine Hariton                     | 9:07 a.m. to 12:20 p.m. |
| Leslie LaManna                       | 9:07 a.m. to 12:20 p.m. |
| Bill MacAloney                       | 9:07 a.m. to 12:20 p.m. |
| Marshal Oldman                       | Absent                  |
| Manuel Ramirez                       | 9:07 a.m. to 12:20 p.m. |
| Lenora Taylor                        | 9:07 a.m. to 12:20 p.m. |
| Stuart Waldman                       | 9:07 a.m. to 12:20 p.m. |

Staff and Legal Counsel

Melody L. Friberg, Regulation/Legislative Analyst  
Mary LeClaire, Executive Analyst  
Kris McCutchen, Initial Licensing and Practice Privilege Manager  
Greg Newington, Chief, Enforcement Program  
Dan Rich, Assistant Executive Officer  
George Ritter, Legal Counsel  
Carol Sigmann, Executive Officer  
Liza Walker, Practice Privilege Coordinator  
Jeanne Werner, Deputy Attorney General, Department of Justice

Committee Chairs and Members

Roger Bulosan, Chair, Qualifications Committee  
Tracy Garone, Vice Chair, Qualifications Committee  
Harish Khanna, Chair, Administrative Committee

Other Participants

Bruce Allen, California Society of Certified Public Accountants  
Ken Bishop, Chair, NASBA CPA Mobility Task Force  
Salvatore Censoprano  
Gil Deluna, Program Manager, Department of Consumer Affairs  
Mike Duffey, Ernst & Young LLP  
Peggy Ford Smith, Society of California Accountants  
Kenneth Hansen, KPMG LLP  
Ed Howard, Center for Public Interest Law  
Sarah Huchel, Senate Office of Research  
Nanette Madsen, Deputy Director, Department of Consumer Affairs  
Craig Miller, American Institute of Certified Public Accountants  
Morris Miyabara  
Carl Olson  
Richard Robinson, E&Y, DT, PWC, KPMG  
Gregory Santiago, Legislative Analyst, Department of Consumer Affairs  
Hal Schultz, California Society of Certified Public Accountants  
Phil Skinner, Center for Public Interest Law

- Do not require that out-of-state firms providing attest services beyond compilations as their highest level of work in California comply with this State's peer review requirements if the firm's state of licensure does not mandate peer reviews.

Ms. Taylor inquired as to why this Board would not require out-of-state firms practicing in California to comply with the State's peer review requirements. Mr. Swartz stated that if California is accepting what other states do and considered those states to be substantially equivalent, the Board would not require peer review. He additionally stated that if a firm registered in California because they did an audit of a company based in California, the firm would have to obtain a California license and comply with peer review because they have to follow the Board's licensing requirements.

Mr. Ramirez stated that it is compelling that as mobility progresses forward, so is the concept that many states would require peer review.

**It was moved by Mr. MacAloney, seconded by Mr. Ramirez, and unanimously carried to adopt the CPC recommendation.**

4. Consideration of Revised Statutory Language Related to Cross-Border Issues Discussed at July 2007 CPC Meeting.

Mr. Driftmier stated that the CPC recommended that the Board accept the proposed revisions (**See Attachment 4**) as presented with the following exceptions:

- Section 5096(a)(3): substitute the word "are" for the language "have been determined by the Board" in reference to out-of-state licensees individual substantial equivalency.
- Section 5096: use the second "(e)" from the language revised on November 13, 2007 (**See Attachment 5**).
- Section 5096.3 related to "Discipline of Cross-Border Practice": Add subsection (e) to read "In the event the Board takes disciplinary action against a person with Cross-Border Practice, the Board shall notify each state in which that person holds a license, certificate, or permit to practice (**See Attachment 5**)."
- Section 5096.4: staff will be working with legal counsel to draft language related to "Administrative Suspension of Cross-Border Practice" as well as considering other enforcement options available to the Board under cross-border practice.
- Section 5096.12 will be redrafted to address attest services as defined in subsections 1, 3, and 4 of Attachment 4 and presented for consideration at the January 2008 CPC and Board meetings.
- Section 5050 entitled "Practice Without Permit, Temporary Practice for

an Individual or Firm With a License from a Foreign Country” will be redrafted to separate the specific statutes related to foreign practitioners. The language will be presented for consideration at the January 2008 CPC and Board meetings.

- Section 5050.2 will be redrafted for consideration at the January 2008 CPC and Board meetings.
- Section 5092: the CPC voted to retain the sunset date of January 1, 2012, in the section, “Pathway 1.”

Mr. Howard stated that CPIL remains opposed to the cross-border provisions. He stated that under the option the Board is considering, the Board would be unable to perform any front-end checks to ensure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime. The Board is undertaking this momentous decision to avoid completing the four-page practice privilege form that consists mostly of check boxes and a payment, in most instances, of \$50 that would allow an out-of-state CPA to practice in the world’s sixth largest economy without restriction for one year.

Mr. Howard stated that in the CPC discussion on November 15, 2007, he heard two responses to staff’s stated disadvantages, which provided consumer protection in lieu of the significant risk identified by staff. The first response was that after-the-fact suspension of an out-of-state individual’s ability to practice in California adequately served as a substitute. Mr. Howard said there are two reasons why CPIL disagrees with the Board’s response. The first is that impairing a person’s license cannot restore the money or property a consumer may have lost because of licentious malfeasance. That is why the Board, for one hundred years, has always required an analysis of qualifications and competencies before someone is able to potentially harm a California consumer. The second reason why after-the-fact suspension of cross-border practice as a defense doesn’t work is because the language is not in front of the Board to vote on. In CPIL’s opinion, being asked to endorse a legislative proposal that relies in significant part upon legislative language that is not drafted is not smart. There is not an emergency here; the Board has the time to get this right.

Mr. Howard stated that the second response provided by the Board is that consumers would be able to look up a CPA’s license on their home state’s Web site. Since Arkansas was mentioned, he decided to investigate Arkansas’ Web site. On Arkansas’ Web site, it does allow a consumer to check if a CPA is licensed. It does not allow, unlike California’s Web site, a consumer to check if an Arkansas licensee has been subject to discipline or currently subject to discipline. Missouri’s Web site also does not allow a consumer to look up if a licensee has been subject to discipline. Part of the premise of the proposal is based upon the fact that California consumers would be able to make intelligent decisions about whether to hire an out-of-state CPA. Mr. Howard stated that the Board does not know if this is true because it has not done a survey of even the key states to figure out whether or not consumers can locate information comparable to what is

available on the Board's Web site. He stated that the state of Arkansas currently requires anyone from out of state who wants to practice in Arkansas to fill out a form and pay \$110.

Mr. Howard stated that the Board does not have the factual predicates before them that are required to make a momentous decision that will potentially allow people who are convicted of a crime to provide services to California consumers.

Mr. Bishop stated that when the four-page form was discussed in the past, it was ascertained that staff was not verifying the information submitted on the form. More importantly, if the verification were being done, the bad people would not complete the form. The reality is that if a CPA comes into this state and does harm to a consumer, California does not have jurisdiction. One of the key elements of this new law is that when CPAs enter California and practice in the State, they submit themselves to jurisdiction of this Board.

Mr. Bishop stated that Missouri does report public discipline on its Web site.

**It was moved by Mr. Ramirez, seconded by Ms. Hariton, and carried to approve the CPC's recommendations. Mr. Bermúdez was temporarily absent.**

5. Consideration of Remaining Issues Related to Cross-Border Practice.

There was no discussion on this agenda item.

6. Consideration of Revised Statutory Language Related to Restatements.

Mr. Driftmier stated that the CPC considered the revised statutory language related to restatements. The CPC recommended that the Board remove the self-reporting requirements for restatements in current Section 5063, as well as a regulatory change to delete Section 59 if the proposed statutory changes become law.

**It was moved by Mr. Petersen, seconded by Mr. Ramirez, and carried to approve the CPC's recommendation. Ms. LaManna abstained. Mr. Bermúdez was temporarily absent.**

7. Discussion Related to Whether a CPA with a General License Operating as a Sole Proprietor Could Complete an Attest Engagement if a CPA with an Attest License Signs the Report.

Mr. Driftmier stated that the CPC considered the issue related to "G" licensed proprietors performing audits through "A" licensed staff. To provide background, California has two licenses. The "A" license allows CPAs to perform audits in California, and the "G" license does not allow the licensee to perform attest services. If a CPA firm owned by a person licensed to do audits sold the practice to a "G" licensed California CPA, could the firm service audit clients as long as an "A" licensed employee of the firm

## Memorandum

CPC Agenda Item III      Board Agenda Item IX.C.4  
November 15, 2007      November 15 - 16, 2007

To : CPC Members      Date : November 6, 2007  
Board Members

Telephone : (916) 561-1713  
Facsimile : (916) 263-3674  
E-mail : drich@cba.ca.gov

From : Dan Rich   
Assistant Executive Officer

Subject : Consideration of Revised Statutory Language Related to Cross-Border Issues  
Discussed at July 2007 CPC Meeting

Attached for your consideration are proposed amendments to current Practice Privilege statutes to reflect the Board's action related to cross-border practice. The major changes reflected in the revisions being made to these statutes are as follows:

- Eliminate the requirement for notification and the fee associated with California practice privilege, permitting practitioners holding valid current licenses to perform services they are legally authorized to perform in their state of principal place of business.
- Pursue a law change to sunset Pathway 1 at a specified future date, such as December 31, 2015.
- Provide an alternative firm registration process for firms that perform attest services for entities headquartered in California. Firms performing non-attest services would not be required to register in California.
- Eliminate the temporary/incidental practice provision in current law for United States practitioners.

In addition, staff identified some outstanding policy issues, which are provided for discussion under the applicable code sections. Attached for reference purposes are the July CPC minutes and the cross-border practice issue paper presented to the CPC and Board in July 2007.

As previously outlined by Carol Sigmann, Executive Officer, it is anticipated that finalized statutory language will go before the CPC and Board in March of 2008 for approval. The language could then be incorporated into legislation, considered by the Legislature and, if passed, forwarded for the Governor's signature in September 2008.

Attachments

**PROPOSED REVISIONS TO BUSINESS AND PROFESSIONS CODE  
SECTION 5096 RELATED TO CROSS-BORDER PRACTICE  
AND RELATED CODE SECTIONS**

**5096. Cross-Border Practice Privilege ~~General Requirements~~**

(a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a cross-border practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

~~(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:~~

~~—(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.~~

~~—(2) Pay a fee as provided in Article 8 (commencing with Section 5130).~~

~~(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.~~

(e) (c) An individual who holds a practices under cross-border practice in this state ~~privilege under this article:~~

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the ~~examination and~~ continuing education requirements of the state in which the individual holds the valid license, certificate, or permit as provided in Section 5096(a) ~~on which the substantial equivalency is based.~~

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the each state that issued in which he or she holds a the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that the individual is not legally authorized to perform in the individual's state of principal place of business.

~~(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.~~

~~(g) (d) (1) No individual may practice under a cross-border practice in this state privilege without prior approval of the board if the individual has, or acquires at any time during the term of the practice privilege, any disqualifying condition under paragraph (2) of this subdivision.~~

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or greater within the last 10 years.

(E) Any other conditions as specified by the board in regulation.

(e) An individual who acquires any disqualifying condition under Section 5096(d)(2) while practicing under cross-border practice in this state shall cease practicing immediately in this state and shall not resume practice in this state without prior approval of the board.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

*Comment: The term "practice privilege" is being replaced with the term "cross-border practice" to alleviate confusion throughout the language regarding the proposed no notice/no fee/no escape requirement in this state and use of the term cross-border is consistent with the UAA.*

*Also, Section 5096(c)(6) has been added to the language to incorporate the Board's decision that licensees can only perform services in this state that they are authorized to perform in their state of principal place of business.*

### **5096.1. ~~Practice Without Notice~~**

~~—(a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:~~

~~—(1) Deemed to be practicing public accountancy unlawfully in this state.~~

~~—(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.~~

~~—(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.~~

~~—(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.~~

*Comment: This section has been deleted as out-of-state licensees will no longer be required to notify the Board of their intent to enter into this state to practice public accountancy unless certain conditions are present, such as the requirement to report a disqualifying condition to the Board prior to commencing cross-border practice in this state.*

### **5096.2. Denial of a Cross-Border Practice Privilege**

(a) An individual licensed out-of-state ~~Practice privileges~~ may be denied cross-border practice in this state for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny cross-border practice privileges in this state using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) ~~That the~~ Cross-border practice privilege is denied.

(B) ~~The~~ Rreasons for denial.

(C) ~~The~~ Earliest date on which the individual is eligible for a cross-border practice privilege in this state.

(D) ~~That~~ The individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within 15 ~~60~~ days.

(E) ~~That, if~~ Should the individual ~~does~~ not submit a notice of appeal and request for hearing within 15 ~~60~~ days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual licensed out-of-state who had been denied a cross-border practice privilege in this state may petition apply for board approval to practice under a new cross-border practice privilege not less than one year after the effective date of the notice or decision denying the practice in this state privilege unless a longer time period, not to exceed three years, is specified in the notice or decision denying the practice in this state privilege.

*Comment: The Board's authority to deny a licensed individual's right to practice in California was retained from the practice privilege statutes and edited to accommodate the cross-border practice provisions.*

*The time frames in Sections 5096.2(b)(1)(D) and 5096.2(b)(1)(E) were modified in accordance with Government Code Section 11506, Notice of Defense.*

### **5096.3. Discipline of a Cross-Border Practice-Privilege**

(a) ~~Practice privileges~~ An individual licensed out-of-state practicing or who practiced in this state under cross-border practice may be are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

~~(b) Practice privileges~~ An individual licensed out-of-state is are subject to discipline by the board during at any time period in which they are valid, under administrative suspension, or no longer valid expired.

(e) ~~(b)~~ The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against an individual licensed out-of-state practicing or who practiced under cross-border practice in this state ~~the holder of a practice privilege~~.

(d) ~~(c)~~ An individual licensed out-of-state whose cross-border practice privilege has been revoked may petition apply for a new board approval to practice privilege in this state not less than one year after the effective date of the board's decision revoking the individual's cross-border practice privilege unless a longer time period, not to exceed three years, is specified in the board's decision revoking the practice in this state privilege.

(e) ~~(d)~~ The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

*Comment: The Board's authority to discipline an out-of-state licensee's right to practice in California was retained from the practice privilege statutes and edited to accommodate the cross-border practice provisions.*

#### **5096.4. Administrative Suspension of a Cross-Border Practice Privilege**

*Comment: Proposed language for Section 5096.4, Administrative Suspension, will be placed on the agenda for the January 2008 CPC and Board meetings for discussion and consideration.*

#### **~~5096.5 Signing Attest Reports~~**

~~—Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.~~

*Comment: This section has been deleted as out-of-state licensees will no longer be required to meet California's attest experience requirements prior to signing attest reports in this state. Instead, out-of-state licensees will be allowed to perform services in this state that they are authorized to perform in their state of principal place of business.*

#### **5096.6 Delegation of Authority, Executive Officer**

In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a notice of denial of a cross-border practice privilege and an interim suspension order, subject to the right of the individual licensed out-of-state to timely appeal and request a hearing as provided for in this article.

#### **5096.7. Definitions**

Except as otherwise provided in this article, the following definitions apply:

(a) Anywhere ~~The~~ the terms "license," "licensee," "permit," or "certificate" as is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons as defined in Section 5035 performing cross-border holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

~~(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.~~

~~(c)~~ (b) Anywhere the term "employee" as is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

*Comment: Based on guidance from legal counsel, staff did not provide proposed definitions for "principal place of business" or "home office." George Ritter will be available at the meeting to discuss the issues related to the drafting of the definitions.*

#### **5096.8. Investigative Powers**

In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

#### **5096.9. Authority to Adopt Regulations**

The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

#### **5096.10. Expenditure Authority to Implement Cross-Border Practice Privileges**

The provisions of this article shall only be operative if there is a continuing appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

#### **~~5096.11. Sunset Date of This Article~~**

~~This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.~~

**5096.12. Limited Alternative Registration for Out-of-State Firms Performing Attest Services Practice**

~~(a) An certified public accounting firm as defined in Section 5035.3, or sole proprietor, that performs attest services for entities headquartered in this state is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through an alternative firm registration the holder of a practice privilege provided that the firm or sole proprietor:~~

~~(1) The practice of public accountancy by the firm is limited to authorized to practice in another state and does not have an office in this state by the holder of the practice privilege.~~

~~(2) Has one partner, shareholder or owner who qualifies for cross-border practice in this state and shall provide the board with his/her name, state of principal place of business, license number, and the identifying information about the firm.~~

~~(2) (3) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.~~

~~(4) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals and firms practicing under cross-border practice.~~

~~(5) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the firm or sole proprietor.~~

~~(6) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.~~

~~(7) Shall not perform any services in this state under cross-border practice that the firm or sole proprietor is not legally authorized to perform in their state of principal place of business.~~

~~(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or ground for denial of a license a holder of a practice privilege through which the firm practices.~~

~~(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.~~

*Comment: At the Board's direction language was drafted to incorporate the alternative firm registration requirement for out-of-state firms or sole proprietors for cross-border practice in this state. However, staff drafted the language to be consistent with the UAA by incorporating the words "attest services" in lieu of "audits" for entities headquartered in this state.*

*Legal Counsel suggested that the word "headquartered" be used in the place of "home office" because the term "home office" does not lend itself to an easy definition due to the term being somewhat amorphous in that any number of client locations could*

qualify. By contrast, "headquarters" is a concept that is more definitive, easier to grasp, and less likely to lead to disputes over its location.

### **5096.13. Out-of-State Firms Performing Non-Attest Services Information**

~~The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.~~

(a) An accounting firm as defined in Section 5035.3, or sole proprietor, that perform non-attest services for entities headquartered in this state may engage in the practice of public accountancy in this state without any form of firm registration provided that the firm or sole proprietor:

(1) Is authorized to practice in another state and does not have an office in this state.

(2) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(3) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under cross-border practice.

(4) Is deemed to have appointed the regulatory agency of each state in which the firm or sole proprietor holds a certificate, license, or permit as the agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the firm or sole proprietor.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that the firm or sole proprietor is not legally authorized to perform in their state of principal place of business.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm or sole proprietor for any act that would be grounds for discipline against a licensee or ground for denial of a license.

*Comment: This section was modified to reflect the fact that out-of-state firms or sole proprietors performing non-attest services for entities headquartered in this state will not be required to notify the Board of the fact they are practicing public accountancy in this state.*

#### **5096.14. ~~Safe Harbor Extension~~**

~~—The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.~~

*Comment: This section has been deleted as the safe harbor provision is no longer applicable.*

#### **5096.15. ~~Practice Privilege Fees~~**

~~—It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.~~

#### **5035.3. "Firm" Includes**

For purposes of subdivision (b) of Section 5050 and Sections 5054 and 5096.12 and 5096.13 "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state.

#### **5050. Practice Without Permit, Temporary Practice for an Individual or Firm With a License from a Foreign Country**

(a) Except as provided in subdivisions (b) and (c) of this section, ~~in subdivision (a) of Section 5054, and in Section 5096.12,~~ no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or practicing in this state under cross-border practice a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

~~—(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing~~

~~services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.~~

~~(e) (b) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that the individual or firm with a license from a foreign country:~~

~~(1) The temporary practice is regulated by the foreign country and is performed under temporary practice under accounting or auditing standards of that country.~~

~~(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).~~

~~(3) Is authorized to practice in another country and does not have an office in this state.~~

~~(4) Is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.~~

~~(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.~~

~~(6) Shall not perform any services in this state that the individual or firm is not legally authorized to perform in the country of principal place of business.~~

*Comment: The temporary/incidental practice provision in current law for out-of-state licensees was removed from Section 5050. However, the provision regarding licensees with a permit to practice from a foreign country was retained.*

## **5050.2. Discipline of Out-of-State or Foreign Accountant an Individual or Firm With a License From a Foreign Country**

(a) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline a person with a permit from a foreign country the right the holder of an authorization to practice under subdivision (b) ~~or (c)~~ of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be a violation of this code or grounds for discipline against a licensee ~~or holder of a practice privilege~~, or ground for denial of a license ~~or practice privilege~~ under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) ~~or (c)~~ of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) ~~or (c)~~ of Section 5050, subdivision (b) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking

the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) ~~or (e)~~ of Section 5050, ~~subdivision (a) of Section 5054, or Section 5096.12~~ for any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

*Comment: This section has been modified to clarify the Board's authority to discipline licensees with a permit to practice from a foreign country. Additional modifications for Section 5050.2(b) will be placed on the agenda for the January 2008 CPC and Board meetings for discussion and consideration.*

#### **~~5054. Exception for Certain Tax Preparers~~**

~~—(a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.~~

~~—(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).~~

*Comment: This section has been deleted as out-of-state licensees no longer require an exception from notifying the Board in order to prepare tax returns in this state.*

#### **5088. Out-of-State Certified Public Accountant Applying for California License**

(a) Any individual who is the holder of a current and valid license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application for a license is granted or denied, practice public accountancy in this state only under a cross-border practice privilege pursuant to the provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from a cross-border practice privilege during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. ~~The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.~~

~~—(b) This section shall become operative on January 1, 2006.~~

## 5092. Pathway 1

(a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d) or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) This section shall remain in effect only until December 31, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2015, deletes or extends that date.

*Comment: At the July 2007 meeting the Board recommended that staff pursue a law change to sunset Pathway 1 and suggested a date of January 1, 2012. However, staff compared the length of time provided to candidates to complete the licensure requirements under Pathway 0 and propose a comparable amount of time for the sunset of Pathway 1.*

## 5109. Jurisdiction Over Expired, Cancelled, Forfeited, Suspended, or Surrendered License

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or

action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

#### **5116.6. Definition of "Licensee"**

Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, individuals licensed out-of-state practicing in this state under cross-border practice ~~holders of practice privileges~~, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

#### **5134. Fees**

The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars (\$600). The board may charge a reexamination fee not to exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the

permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

~~(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars (\$125).~~

~~(2) On and after enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).~~

~~(j) (i) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).~~

~~(k) (j) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.~~

~~(l) (k) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.~~

**CALIFORNIA BOARD OF ACCOUNTANCY**

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ATTACHMENT 2

**COMMITTEE ON PROFESSIONAL CONDUCT****MINUTES OF THE MEETING**

July 19, 2007

Hilton Pasadena

168 S. Los Robles Avenue.

Pasadena, CA 91101

**CALL TO ORDER**

Donald Driftmier, Chair, called the meeting of the Committee on Professional Conduct (CPC) to order at 9:30 AM. Mr. Driftmier indicated that to ensure compliance with the Bagley-Keene Open Meeting Act, Section 11122.5(c)(6), if a majority of members of the full Board are present at a committee meeting, members who are not members of that committee may attend that meeting only as observers. The Board members who are not committee members may not sit at the table with the committee, and may not participate in the meeting by making statements or by asking questions of any committee members.

Mr. Driftmier thanked Mr. Swartz for chairing the May 10, 2007, CPC meeting. Mr. Driftmier also thanked Board staff for their work and the participants who came to the CPC meeting to give their input.

To set the stage for a CPC meeting containing many issues requiring analysis and decisions, Mr. Driftmier read a passage about imagination and change, innovation and the people who pursue it.

Mr. Driftmier introduced Executive Officer Carol Sigmann. Ms. Sigmann stated that this was Aronna Wong's last CPC meeting and Board meeting due to her planned retirement on July 31, 2007, and that Ms. Wong had made many valuable contributions to the Board. Ms. Sigmann introduced Melody L. Friberg, who started with the Board on June 25, 2007, and will assume Ms. Wong's position. Ms. Friberg thanked Ms. Sigmann and Ms. Wong, and she gave a brief statement regarding her experience and education. Mr. Driftmier stated that he appreciated Ms. Wong's assistance with the CPC meetings, that the Board will miss Ms. Wong very much, and that the Board welcomed Ms. Friberg.

Present:

David Driftmier, Chair  
Sally Anderson  
Richard Charney  
Lorraine J. Hariton  
Marshal Oldman  
Manuel Ramirez  
David Swartz

Board Members Observing:

Angela Chi  
Robert Petersen  
Lenora Taylor

Board Staff and Legal Counsel

Patti Bowers, Chief, Licensing Division  
Melody L. Friberg, Legislation/Regulations Coordinator  
Mary L. Gale, Communications and Planning Manager  
Mary LeClaire, Executive Analyst  
Peter Marcellana, Practice Privilege Analyst  
Kris McCutchen, Licensing Manager  
Greg Newington, Chief, Enforcement Division  
Dan Rich, Assistant Executive Officer  
George Ritter, Legal Counsel  
Carol Sigmann, Executive Officer  
Aronna Wong, Legislation/Regulations Coordinator

Other Participants

Ken Bishop, National Association of State Boards of Accountancy (NASBA)  
Roger Bulosan, Chair, Qualifications Committee (QC)  
Tom Chenoweth  
Mike Duffey, Ernst and Young LLP  
Stephen L. Friedman, Society of California Accountants (SCA)  
Suzanne Jolicoeur, American Institute of Certified Public Accountants (AICPA)  
Richard Robinson, Richard Robinson & Associates  
Hal Schultz, California Society of Certified Public Accountants (CalCPA)  
Antonette Sorrick, Deputy Director, Board Relations, Department of Consumer Affairs (DCA)  
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

I. Minutes of the May 10, 2007, CPC Meeting.

**It was moved by Mr. Swartz, seconded by Dr. Charney, and carried to approve the minutes of the May 10, 2007, CPC meeting (Mr. Ramirez abstained).**

## II. Discussion Related to Timeframes for Addressing Cross-Border Practice and Peer Review.

Ms. Sigmann discussed the Cross-Border Practice and Peer Review timetables as outlined in her July 3, 2007, memorandum to CPC and Board members, "Timeframes for Addressing Cross-Border Practice and Mandatory Peer Review" (**Attachment I**). She stated that the focus will be to fully review & analyze the changes, have all documentation put together to support the direction of the Board, and to timely address any enactment of legislative or regulatory changes that need to occur.

Ms. Sigmann stated that Cross-Border Practice is on "the fast track," at least the fastest track on which the Board could place it, and she asked for any feedback or questions as she discussed this subject. She stated that in this meeting, policy direction from the Board was needed on three Cross-Border issues, as discussed in the July 9, 2007, issue paper from staff, "Policy Decisions to Provide Direction for Drafting Statutory Language to Address Cross-Boarder Practice Issues" (**Attachment II**):

- Eliminating or easing the notification requirement.
- Substantial Equivalency.
- Cross-Border Practice by firms.

Ms. Sigmann went on to say that in the November 2007 CPC meeting, it would consider any issues not addressed in the current issue paper, and the CPC would review draft statutory language prepared by staff after policy decisions made at the Board meeting. In the March 2008 Board meeting, Ms. Sigmann anticipated the Board's review and approval of the proposed statutory language, which could be amended into existing legislation between April and June. The Senate Business, Professions and Economic Development Committee would hear the bill, and then the full Senate would consider the bill (Board staff would prepare regulations in July if necessary). After passage in the Senate and returning to the Assembly, the bill would be heard in Assembly Business and Professions Committee and on the Assembly floor in July and August.

Ms. Sigmann stated that if all goes well, *i.e.*, all issues and questions were answered by the Board, and the timeframe was met, then a bill could go to the Governor in September of 2008. However, Ms. Sigmann cautioned that in order to meet this proposed timeframe, the CPC and Board meetings would be very demanding.

While the legislation would become effective in January 2009, the anticipated implementation date and completion of the rulemaking process would be July 2009. The additional time would be necessary to deal with any required changes, such as staffing issues and legislative budget change proposals.

Mr. Oldman asked if there is an existing bill that can accommodate this amendment. Ms. Tindel verified that CalCPA has a two-year bill that can be amended. Mr. Robinson discussed another possible bill and suggested the option to separate Cross-Border Practice from Peer Review. He stated that there are bills in both the Senate and the Assembly that could be used for such an amendment. Mr. Robinson also mentioned

that the restatements issue could be added to one of those bills, thus using more than one bill to effectuate all these changes.

Ms. Sigmann stated that the CPC meetings would alternate between discussions of Peer Review and Cross-Border Practice. There will be an August 3, 2007, meeting of Mr. Swartz, Mr. Driftmier, and Board staff with Bill Gage, Chief Consultant for the Senate Business, Professions and Economic Development Committee, and Ross Warren, Chief Consultant for the Assembly Business and Professions Committee. The focus of that meeting will be the Board's progress with Peer Review, Mr. Gage's and Mr. Warren's issues with Peer Review, and how to expedite the process. That meeting may affect the timetable presented at today's CPC meeting.

The September 2007 CPC meeting will include Peer Review issues of who would participate, how the Board will deal with deficient findings and transparency.

Ms. Sigmann stated that the greatest concern would most likely be with the consumer protection piece. In January 2008, the Peer Review discussion will continue related to oversight and renewal, and staff will ask for policy direction in these areas. For the May 2008 meeting, staff will have prepared the report for the Legislature and draft language. Because staff must have Board policy decisions on these issues, Ms. Sigmann indicated that she believed that a special meeting in February 2008 may be necessary. She requested that Board members let her know their schedules. There was discussion that Board members' schedules would be tight due to the tax season.

Mr. Robinson recommended choosing a Senate bill that has already passed the Senate in order to take the pressure off the Board and to avoid a February 2008 meeting during tax season. As a vehicle for amendment, the bill would be heard in the Assembly next May, the bill would go back to the Senate in August, and the bill could go to the Governor in September. He stated that he believed the Legislature will pursue a modified timetable next year with regard to which type of bills they will hear and when.

Ms. Sigmann stated that if Mr. Robinson's recommended course of action could be taken, then the elements of the time frame could be accomplished faster. Mr. Robinson stated his belief that the Legislature is favorable to accommodating the Board's task forces and required hearings in this post-Enron era. He stated that it would be better to amend an existing one-year bill rather than to start with a two-year bill, which he believed legislative staff would recommend as the more standard process.

Ms. Sigmann stated that if this fast track is successful, all work by the Board and staff must be done by May of 2009. If it is not possible to use the fast track, staff will go forward with something in 2009. Ms. Sigmann reminded the Board that whichever model they choose for Peer Review, if additional staff are required to implement the model, then the program could not be implemented until a legislative budget change proposal is approved and the additional Board staff are hired.

**It was moved by Mr. Ramirez, seconded by Mr. Oldman, and carried unanimously to approve the “Timeframes for Addressing Cross-Border Practice and Mandatory Peer Review.”**

III. Policy Decisions to Provide Direction for Drafting Statutory Language to Address Cross-Border Practice Issues.

Mr. Driftmier commented that Cross-Border Practice is typical in the accounting profession and it is an important issue since licensees are expected to know the other states' laws. He thanked NASBA and Mike Ueltzen for information and comments provided at previous meetings.

Ms. McCutchen reviewed the Quick Poll results with regard to what other states have instituted for Cross-Border Practice, “Cross-Border Practice Quick Poll Results” (**Attachment III**). Mr. Bishop discussed the 11 states that have passed legislation regarding mobility (Cross-Border Practice) and in what part of the process they are, *e.g.*, developing regulations.

Ms. Hariton asked for a matrix form of states' information on the status of what legislation had been initiated or passed, key criteria of their proposals, and updates for each meeting. Mr. Bishop stated that he would provide a summary in matrix format to Ms. Sigmann. Mr. Bishop went on to say that he considered mobility success to be a state that had passed legislation that (1) has no notification required; (2) has no fee required; and (3) reiterates that the state board has clear jurisdiction over CPAs visiting that state. He stated that there are four entities in agreement regarding mobility issues: state boards, AICPA, accountants coalition, and NASBA.

Mr. Swartz asked whether standard language could be provided to legislators so that adopted language would be consistent and not subject to different interpretation among states. Mr. Bishop suggested using the exposure draft with uniform language as well as the possibility of California reviewing language for potential interpretation problems.

Mr. Swartz asked whether any states have refused to consider revision of their existing language, and Mr. Bishop responded that there were a few states. NASBA was setting up meetings with those states to discuss the issue with board members and board attorneys.

Mr. Swartz asked if it were preferable to have AICPA work for a federal law on mobility to apply to all states rather than try to attain agreement with each individual state. Mr. Bishop stated his belief that control left to the states was better than a federal law.

Regarding the status matrix on states' mobility programs, Ms. Sigmann stated that she would meet with staff and Ms. Hariton to ascertain what information they needed.

Ms. McCutchen began the discussion of the issue paper on Cross-Border Practice, "Policy Decisions to Provide Direction for Drafting Statutory Language to Address Cross-Border Practice Issues" (**Attachment II**), by stating that staff had listed five options, although the Board may have other options. Options could be combined if the Board desired. Ms. McCutchen reiterated the key questions to be considered in choosing options:

- What should be the qualifications for practitioners and firms to legally practice in California?
- How much Board oversight is essential for consumer protection?
- Where should the line be drawn between essential consumer protection vs. unnecessary, burdensome regulation?

Ms. McCutchen stated that the answers to these questions would likely have to be presented to the Legislature at some point in the process of proposing changes to Cross-Border Practice.

Issue 1: Eliminate or ease the notification requirement: Ms. Wong indicated that the Uniform Accountancy Act (UAA) exposure draft discussed in the prior Board meeting contained an overarching principle that state boards should trust each other regarding appropriate licensing and discipline. She also related Mr. Robinson's drivers' license analogy that a licensed driver can drive in all states, but he or she must know the driving laws of each state. Ms. Wong also discussed Julie D'Angelo Fellmeth's opposition to eliminating notification, specifically the need to provide a good rationale to change the Board's 100+ years of state-based regulation, which Ms. Fellmeth believed would be dismantled by eliminating notification. Ms. Fellmeth had stated that notification would provide the Board with the authority to issue a practice privilege that could then be taken away when warranted.

Mr. Robinson reiterated the concept of "no escape" from Board actions taken subsequent to receiving a complaint from an offended party or another agency. He stated that there would be no negative impact to the Board's authority and regulatory enforcement power, were notification to be eliminated.

Mr. Oldman asked if all states have a continuing education (CE) requirement of 80 hours. Mr. Bishop replied that a few states do not. Mr. Robinson stated that Cross-Border Practice did not envision that a California license would be needed, wherein the 80 hours of CE are required for renewal. Rather, Cross-Border is for temporary and incidental practice. Mr. Robinson stated that licensure requirements are different among the states and those requirements are not expected to change.

Ms. Sigmann asked about the ramifications of a CPA moving his or her office to California. Mr. Duffey replied that if the CPA relocates their principal place of business to California, then they must be licensed by California.

Mr. Swartz asked that only those options in the staff issue paper that are consistent with Section 23 of the UAA be discussed. Ms. Wong replied that both Options 1 and 5 are consistent with the UAA.

Ms. McCutchen read the disadvantages of the options. California has a reportable events requirement, but not all states have this.

Mr. Swartz stated his opinion that California's notification system is antiquated because law-abiding CPAs will follow the laws and regulations, whereas unscrupulous individuals would fail to follow the requirements, such as the reportable events requirement. They would continue practicing until someone complained, at which time they would come to the Board's attention.

Ms. Anderson stated that she believed that non-California CPAs are hired by clients from that CPA's own state, so that those clients do have access to information regarding that CPA on the state's database.

Ms. Hariton inquired about the status of the NASBA database, and she suggested that out-of-state CPAs wanting temporary and incidental practice in California could register with the NASBA database.

Mr. Swartz stated that the consumer does have the responsibility to find out information regarding their accountant of choice. If they cannot find information, perhaps they should choose another CPA for whom information is available.

Mr. Ramirez stated that he believed that all states have a Website with information regarding its licensees.

Mr. Robinson reiterated the importance of trusting other state boards. He said that California is unique in its requirement for reportable events, which would still be applicable for Cross-Border Practice as well as temporary and incidental practice. UAA Section 23 does not repeal any California licensee requirements; rather, it reinforces the "no escape" provision that non-California CPAs are subject to for temporary and incidental practice. Ms. Wong clarified that the current Cross-Border Practice Privilege statute goes beyond the temporary and incidental practice statute. She advised that a Cross-Border Practice proposal be clear regarding these elements so that Board staff could draft the appropriate statutory language to accurately reflect the Board's decision.

Mr. Bishop agreed that Cross-Border Practice Privilege and temporary and incidental practice are different, so that both Section 23 and Section 7 should be viewed together. The exposure draft recommends that the CPA would have to issue any audit he or she does in California, through a firm licensed in California. Therefore, the Board would have direct regulatory authority over the entity issuing the audit.

Mr. Oldman asked whether an out-of-state CPA who solicits clients in California would be covered under Section 23. The answer was that anything could be done under Section 23, with the exception of attest work, which would have to be issued through a firm licensed in California.

Mr. Schultz discussed that California does not have a definition of "temporary and incidental." It is not clear if "incidental" refers to work done incidental to an engagement or incidental to the CPA's practice in another state. He stated that the phrase might be used in the sense that a CPA does not have an office in California. Mr. Schultz stated his belief that the intent of Section 3 was to encompass any type of practice as long as the CPA does not have an office in California.

Ms. Bowers discussed both Options 1 and 5, and she stated that Option 5 is the one most similar to Section 23.

**It was moved by Mr. Oldman, seconded by Mr. Swartz, and unanimously carried that the CPC recommend to the Board Option 5 on Page 6 of the staff issue paper regarding "Eliminating or Easing the Notification Requirement." Option 5 states: "Eliminate the requirement for notification and the fee associated with California practice privilege as in Option 1, but only permit a practitioner to perform the services he or she is legally authorized to perform in his or her state of principal place of business. For example, if a practitioner has been disciplined and is not permitted to perform audits in the state of principal place of business, he or she would not be authorized to perform audits in California."**

Issue 2. Substantial Equivalency: Ms. Wong discussed the history of substantial equivalency. When the UAA proposed that all states have the same licensing laws, the Board proposed in 2000 to adopt the UAA licensing requirements, including the 150 hours of education. The California Legislature did not support this requirement, which was the equivalent of a Master's degree when California had not even required a Bachelor's degree up to that time. The resulting compromise was two pathways to licensure, with Pathway 2 being equivalent to the UAA licensing requirement. NASBA indicated that Pathway 2 was substantially equivalent, but Pathway 1 was not. California requires that to meet substantial equivalency, a CPA must be licensed in a state that NASBA indicates is substantially equivalent and meets all UAA requirements, including the 150 hours; or the CPA could have completed 150 hours to be considered "individually substantially equivalent." For flexibility, California also added an alternative that the CPA is considered substantially equivalent if he or she has practiced public accountancy in four of the last ten years ("four of ten"). California's lack of consistency with the UAA substantial equivalency standards causes problems, because some states do not consider California to be a substantially equivalent state. Problems result for both CPAs wanting to work in California as well as California CPAs who wish to have Practice Privilege in other states.

Mr. Driftmier noted that California does not have substantial equivalency even among its own licensees, since licensees who are licensed after 2002 must complete 500 hours of audit experience before they are able to do audits in California.

It was stated that Option 4 was consistent with the UAA.

Mr. Robinson discussed the possible sunseting of Pathway 1 by 2012 or 2013 to make California a substantially equivalent state. This time frame would also give adequate notice of requirements to high school students considering accounting as a career.

Mr. Swartz asked about the number of individuals following Pathway 1. Mr. Robinson suggested looking at all new licensees over the last several years to ascertain the numbers of licensees in each pathway. Ms. Wong noted that there was a trend to follow Pathway 2. Mr. Robinson suggested a long lead-time before the sunseting of Pathway 1 in order to give adequate notice to students.

Mr. Duffey stated that Pathway 1 CPAs must demonstrate that they individually meet the UAA criteria. He noted that there are grandfather clauses, such as "4 of 10," if the individual passed the exam before 2012 - - but he stated that not all states have adopted these grandfather clauses.

Ms. Hariton stated that consumer protection involves licensees coming into California, and California's requirements for these individuals being consistent with the UAA.

Ms. Wong stated that deleting Pathway 1 makes California a fully substantially equivalent state; then our licensees can have Cross-Border Practice in more states.

Mr. Bishop stated that a random selection of transcripts indicated that many individuals with Bachelor's degrees who had not completed the full 150 hours were close to 140 units. He said that a Bachelor's degree with only 120 hours was rare. In addition, the "4 in 10" provision has been removed from the UAA and rules.

Dr. Charney asked if 2012 was an appropriate cutoff date for deleting Pathway 1. Mr. Robinson stated that he believed 2012 was adequate notice, and he pointed out that California would become a fully substantially equivalent state as soon as the bill is signed, rather than waiting for 2012. In response to a question, it was pointed out that this would not affect the "G" and "A" licenses.

The issue was discussed regarding whether the extra 30 hours required should relate to accounting. Mr. Robinson stated that academic staff had testified that the units were taken in related areas, such as computer applications and management.

**It was moved by Mr. Oldman, seconded by Dr. Charney, and unanimously carried that the CPC recommend to the Board Option 4 on Page 11 of the staff issue paper regarding "Substantial Equivalency." Option 4 states: "Do not modify the**

**practice privilege laws related to substantial equivalency. Instead, pursue a law change to sunset Pathway 1 at a specified future date (for example, January 1, 2012)."**

Issue 3. Cross-Border Practice by Firms: Ms. Wong discussed the history and explained that up to 2006, the Board had Practice Privilege for individual practitioners but not for firms. Law changes from AB 1868 now allow Practice Privilege holders to practice on behalf of their firm, or their firm is allowed to practice through an individual Practice Privilege holder. The law requires that Practice Privilege holders provide identifying information about their firm. The UAA proposal presented to the Board is different from California law.

Mr. Schultz stated that he thinks Option 4 is workable for California and is not an onerous issue. The UAA applies only to audits. The UAA Committee worked on a definition of "home office" that will be included in the final UAA rule that comes out.

Ms. McCutchen and Ms. Wong discussed Option 1, and they stated that it was consistent with the UAA but was very different from existing California laws. There was discussion that Option 4 would leave the successful California process in place. Mr. Bishop stated that the intent of Section 7 was mobility if there was substantial equivalency, with the exception of audits.

**It was moved by Ms. Hariton, seconded by Mr. Oldman, and unanimously carried that the CPC recommend to the Board Option 4 with modification, as indicated on Page 15 of the staff issue paper regarding "Cross-Border Practice by Firms." The modification deletes "attest services" and substitutes language to result in Option 4 specifying: "Provide an alternative firm registration, as described in Option 3, but only for audits of entities with home offices in California. Non-attest services could be provided without any form of firm registration."**

The Board awaits the definition of "home office."

Mr. Driftmier thanked Mr. Ramirez for purchasing coffee for the meeting, and he thanked all the Committee members.

#### IV. Comments from Members of the Public.

Members of the public provided their comments during the course of the meeting.

#### V. Agenda Items for Next Meeting.

Scheduled for the next meeting is a discussion of Mandatory Peer Review.

There being no further business, the meeting was adjourned at 12:30 PM.

## CROSS-BORDER PRACTICE ISSUES

### INTRODUCTION

At the March 22-23, 2007, Board meeting, representatives of the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA) made a presentation to the Board regarding the need to ease cross-border practice. The presentation covered proposed revisions to the Uniform Accountancy Act (UAA) intended to increase the uniformity of states' laws underpinning cross-border practice. (See Attachment 1 for excerpts from the minutes of that meeting.)

At the May 2007 meetings of the CPC and the Board, discussion related to mobility and the UAA Exposure Draft continued. The Exposure Draft was considered for two reasons. First was to determine whether the Board wanted to submit comments. (The comment letter submitted by the Board is provided as Attachment 2.) A second reason for considering the Exposure Draft was to determine if the Board wishes to pursue changes in California law to address the difficulties involved in cross-border practice as articulated at the March 2007 meeting. The purpose of this paper is to address the second objective related to developing proposed revisions to California law.

This analysis covers the three main issues related to cross-border practice: (1) eliminating or easing the notification requirement, (2) substantial equivalency, and (3) cross-border practice by firms.

In evaluating these issues and options, the CPC and the Board may wish to keep in mind the following questions:

- What should be the qualifications for a practitioner or firm to legally practice in California?
- How much Board oversight is essential for consumer protection?
- Where should the line be drawn between essential consumer protection and unnecessary regulation that restricts cross-border practice?

### ELIMINATING OR EASING THE NOTIFICATION REQUIREMENT

#### OVERVIEW

During the past two meetings, the CPC and the Board heard comments indicating that to be responsive in today's business environment and to adequately serve their clients, CPAs need to be able to practice in multiple states. It was noted that the current system of state-based regulation, with its lack of uniformity and varied notification

requirements, makes cross-border practice very difficult. The solution proposed in the UAA Exposure Draft has been characterized as "no notice/no fee/no escape."

At its May 10, 2007 meeting, the CPC reviewed a staff analysis of the UAA Exposure Draft, which included discussion points both in favor of and in opposition to eliminating the notification requirement. (Attachment 3 provides those discussion points for consideration. Also see the minutes of that meeting, CPCC Agenda Item 1, for more information.) After reviewing and discussing the staff analysis, the CPC recommended, and the Board adopted, a position of support for modifying the UAA to eliminate the notification requirement for cross-border practice. The CPC also placed on its agenda for discussion at a future meeting consideration of whether California law should be modified to incorporate the "no notice/no fee" approach, and if so, what form those modifications should take.

Before considering various options, the CPC has before it the general question of whether the notification currently required for California practice privilege should be eased or eliminated to facilitate practice in California by CPAs licensed in other states. When deliberating on this question, the CPC may find it useful to consider the following key points brought up at its May 2007 meeting:

- The CPC expressed support for the overarching principle that state boards should trust one another to appropriately license and appropriately discipline. The Board supported this viewpoint and noted that trust is fundamental to facilitating the twin goals of consumer protection and enhanced mobility. From this perspective, it can be argued that the appropriate "front end" checks on a practitioner's qualifications and the "back end" checks to discipline as necessary have already been accomplished by the state board in the practitioner's home state, making notification nothing more than a record-keeping process.
- Ms. D'Angelo Fellmeth representing the Center for Public Interest Law (CPIL) communicated CPIL's opposition to the "no notice/no fee approach." As stated in the draft May 10, 2007 minutes "She [Ms. D'Angelo Fellmeth] indicated that there is anecdotal evidence to show mobility is a problem, but no real data. She expressed concern regarding whether the problem was of sufficient magnitude to warrant dismantling the state-based licensing system that has been in place for over 100 years. She added that she would have a greater comfort level with the proposal if there was some demonstration of the magnitude of the problem and if an alternative system such as the national licensee database was fully up and running."
- Richard Robinson, representing his clients (the "Big Four" accounting firms) presented a "driver's license analogy." The May 10, 2007 draft CPC minutes state: "He [Mr. Robinson] explained that if a person has a driver's license in New York, that person does not need to get another license to drive in California, but does need to comply with California's Motor Vehicles Code. If a person with a California driver's license goes to New York, that person has to comply with New York's laws. For example, in California, it is legal to turn right on a red light, but it is illegal in New

York, and if California-licensed driver turns right on a red light in New York, that person can get a ticket.” This driver’s license analogy may be useful for conceptualizing the “no notice/no fee” approach.

If, after deliberating on the information that has been provided, it is concluded that the notification currently required for California practice privilege should be modified, either by eliminating notification altogether or by changing the requirements in some way to ease practice in California by out-of-state CPAs, then the next step would be to identify more specifically what form that modification should take. Below are some possible options for eliminating or easing the notification requirement for California practice privilege.

#### OPTIONS FOR CONSIDERATION

**Option 1:** Eliminate the requirement for notification and the fee associated with California practice privilege. Permit any practitioner who meets California’s substantial equivalency requirements and who holds a current, valid license to practice public accountancy in the state of principal place of business to practice in California.

#### **Advantages:**

- This option is consistent with the overarching principle that state boards should trust one another to appropriately license and appropriately discipline practitioners.
- Eliminating notification would make it much easier for CPAs licensed in other states to serve clients in California.
- Changing California’s laws to eliminate notification would allow California to participate in a national effort to ease mobility and facilitate cross-border practice.
- It has been suggested that since there is automatic jurisdiction, complaint-driven enforcement, and reportable events requirements, eliminating notification streamlines administration and reduces unnecessary record-keeping without weakening consumer protection.
- The consumer information benefits of notification may be addressed more efficiently through other means. The NASBA licensee database, when fully operational, will make information available to consumers about practitioners licensed anywhere in the United States.

#### **Disadvantages:**

- Under this option, the Board would be unable to perform any “front end” checks to make sure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime.

- This option would permit unrestricted practice by a practitioner whose license has been disciplined in a state other than the state of principal place of business, or whose license in the state of principal place of business has been restricted but is still "current and valid."
- This option would permit unrestricted practice by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline.
- Notification currently enables the Board to provide information to consumers via licensee-lookup regarding an out-of-state practitioner's qualifications, thereby assisting consumers in making informed decisions. Until NASBA's licensee database is fully up and running, eliminating notification would take away this important source of information for consumers.
- It can be argued that notification provides a means of informing out-of-state practitioners about California's requirements. Without notification, licensees engaged in cross-border practice would bear the full burden of educating themselves regarding California's requirements.

**Option 2:** Eliminate the requirement that out-of-state licensees seeking California practice privilege give notification to the Board. Instead require out-of-state licensees to provide notification and pay a fee to a central database for cross-border practitioners to be developed in the form of national tracking system. The fee would support database development and maintenance. Encourage other states to adopt similar law changes so that this national database would serve as a resource for state boards and consumers seeking information regarding practitioners engaged in cross-border practice.

**Advantages:**

- Since practitioners would only be required to provide one notification and pay one fee, the burden of engaging in cross-border practice would be eased significantly.
- This option has the potential to provide many of the same consumer protection and consumer information benefits as the current Practice Privilege Program.

**Disadvantages:**

- The entity that would develop and administer such a database has not been identified. While NASBA appears to be a logical choice, it has not agreed to be the administering entity.
- To meet the needs of multiple state boards, notification requirements might need to be simplified which could diminish the consumer protection benefits of notification; or

alternatively the administering entity would need the capability to review requirements unique to each jurisdiction which could be complex and costly.

- For an entity other than NASBA to successfully develop and maintain this database, many states would have to agree to participate, enact appropriate law changes, and enter into contracts with the database developer. This scenario appears unlikely.

**Options 3:** Eliminate the requirement for notification and the fee associated with California practice privilege as in Option 1, but only for those practitioners providing non-attest services. Continue to require notification for attest services.

**Advantages:**

- This option would make it much easier for practitioners licensed in other states to provide non-attest services to California clients.
- This option would retain notification for the area of greatest consumer risk – attest services.
- Since audits are signed in the name of the firm, there is a possibility the consumer might not know the identity of a practitioner causing consumer harm and therefore may not be able to communicate this information to the Board. Requiring notification for attest services is a way to address this concern.
- To be authorized to sign reports on attest engagements under California practice privilege, a minimum of 500 hours of attest experience is required. Requiring notification for attest services would enable the Board to retain the ability to verify compliance with this requirement.
- This option might be a reasonable first step in order to gradually move towards eliminating notification for all services.

**Disadvantages:**

- The Board would be unable to perform any “front end” checks to make sure the practitioner is duly licensed and has not been disciplined or convicted of a crime. Furthermore, with no notification the licensee-lookup information currently available on the Board's Website would no longer be available to assist consumers.
- This option would make California's cross-border provision inconsistent with the UAA and possibly inconsistent with the laws of most other states.

**Option 4:** Eliminate the requirement for notification and the fee associated with practice privilege as in Option 1. Permit any practitioner who has not had his or her right to practice revoked or restricted by a regulatory authority or been convicted of specified crimes related to the practice of public accountancy such as embezzlement or fraud

within a specified period of time (for example, a five-year period) to practice public accountancy in California without notification or fee.

Currently, under California practice privilege, practitioners must report potentially disqualifying conditions which include being convicted of a crime; having a license denied, suspended, revoked, or otherwise disciplined or sanctioned; being the subject of an investigation by or before a state, federal, or local agency or court; or having had a judgment or arbitration award of \$30,000 or greater related to the practitioner's professional conduct. When a disqualifying condition is reported, Board staff review the reported information to make a determination regarding the practitioner's qualifications for practice privilege. In a sense, Option 4 would retain the basic policy behind this approach, but modify it for a "no notice" environment.

#### **Advantages:**

- By denying cross-border practice to licensees who have been disciplined by a regulatory authority or convicted of a crime, this option would provide better consumer protection than Option 1.
- Even though some individuals would be barred from cross-border practice, this option would still allow the vast majority of out-of-state CPAs to serve California clients without having to give notice.
- Like Option 1, this option would streamline administration and reduce the record-keeping currently required in the Practice Privilege Program.

#### **Disadvantages:**

- The Board would be unable to perform any "front end" checks to make sure the practitioner is duly licensed and has not been disciplined or convicted of a crime. Furthermore, with no notification, the licensee-lookup information currently available on the Board's Website would no longer be available to assist consumers.
- This option would be inconsistent with the UAA and with cross-border provisions in many states.
- This option could potentially deny cross-border practice to an out-of-state CPA who has been rehabilitated and is currently practicing in compliance with the law.

**Option 5:** Eliminate the requirement for notification and the fee associated with California practice privilege as in Option 1, but only permit a practitioner to perform the services he or she is legally authorized to perform in his or her state of principal place of business. For example, if a practitioner has been disciplined and is not permitted to perform audits in the state of principal place of business, he or she would not be authorized to perform audits in California.

### **Advantages:**

- This option is consistent with the overarching principle that state boards should trust one another to appropriately license and appropriately discipline practitioners.
- By imposing the same restrictions on the license that exist in the state of principal place of business, this option would provide better consumer protection than Option 1.
- Like Options 1 and 4, this option would streamline administration and significantly reduce the record-keeping currently required in the Practice Privilege Program.

### **Disadvantages:**

- This option would permit unrestricted practice by a practitioner whose license has been disciplined in a state other than the state of principal place of business.
- The Board would be unable to perform any “front end” checks to make sure the practitioner is duly licensed and has not been disciplined or convicted of a crime. Furthermore, with no notification, the licensee-lookup information currently available on the Board's Website would no longer be available to assist consumers.
- This option would permit unrestricted practice by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline.

## **SUBSTANTIAL EQUIVALENCY**

### **OVERVIEW**

The concept of substantial equivalency was added to the UAA a decade ago to bring about uniformity in state licensing requirements in order to facilitate cross-border practice. With the goal of uniformity in mind, states were encouraged to enact licensing laws “substantially equivalent” to the requirements in the UAA. The UAA's licensure requirements provide basic standards for entry-level competency in the areas of education, exam, and experience.

The Board pursued conformity with the UAA in two phases. In the first phase, as part of its 2000 sunset review, the Board studied the UAA and proposed changes to its licensing laws to achieve more consistency with the UAA's licensing provisions. The outcome of the sunset review process was a legislative compromise, which, in 2001, enacted two “pathways” to licensure. These pathways are codified in Business and Professions Code Sections 5092 and 5093. Pathway 1 allows applicants to qualify for licensure with only a baccalaureate degree, but requires two years of experience (Section 5092). Pathway 2 (Section 5093) is consistent with the UAA and requires that

licensure applicants complete a baccalaureate degree and 150 semester units of education. These applicants have a one-year experience requirement.

After these laws were enacted, the Board requested an evaluation by NASBA's Qualification Appraisal Service to assess California's substantial equivalency. The Board was informed that California was "substantially equivalent," but only with regard to Pathway 2. Because of having two pathways to licensure, many states that have enacted UAA cross-border provisions do not view California as a fully substantially equivalent state.

The second time the Board considered the UAA was in 2003-2004. This time the discussion focused on cross-border practice and concluded with the development of the Practice Privilege Program. In developing this program, an attempt was made to achieve consistency with the UAA by requiring compliance with the provisions in Section 5093 for California practice privilege. Specifically, current practice privilege requirements make practice in California available to licensees of other states who meet one of the three requirements: (1) the practitioner is from a state considered by the Board to have licensure requirements "substantially equivalent" to Business and Professions Code Section 5093; (2) the practitioner has individually met licensure requirements "substantially equivalent" to Business and Professions Code Section 5093; or (3) the practitioner has practiced public accountancy for four of the last ten years. This later provision was intended to make cross-border practice available to licensees who were not from "substantial equivalent states" and may have obtained licensure prior to the establishment of the requirement to complete 150 semester units of education.

These practice privilege requirements were consistent with substantial equivalency provisions in UAA Section 23 at the time the Board considered this issue in 2003-2004. Recent revisions to the UAA allow those individuals licensed before 2012 to be deemed substantially equivalent without completing 150 semester units of education.

The UAA Exposure Draft discussed at Board meetings in March and May 2007 proposed many revisions to the UAA related to cross-border practice, but did not speak to substantial equivalency. However, the CPC at its May 2007 meeting did express an interest in considering substantial equivalency in the context of changes to California law for enhanced mobility. During those discussions and earlier discussions of the matter, it was noted that although the concept of substantial equivalency was originally intended to facilitate mobility, current laws might instead be creating a barrier to cross-border practice. Within this framework, the following questions may merit consideration by this CPC and the Board: (1) Do the substantial equivalency provisions in California law need to be modified to better facilitate cross-border practice by qualified out-of-state practitioners seeking to serve California clients? (2) Do California laws need to be modified in order to make it easier for California CPAs to serve their clients in other states? The options discussed below address one or both of these questions. It would also be possible to combine options so that both questions are addressed.

## OPTIONS FOR CONSIDERATION

**Option 1:** Eliminate all substantial equivalency requirements (including the provision of practicing public accountancy for four of the last four years) for cross-border practice in California and allow any CPA to practice here who has a current, valid license to practice public accountancy from any state.

### **Advantages:**

- Eliminating the substantial equivalency provision would make it easier for out-of-state CPAs to practice in California. Currently, some CPAs with current, valid licenses do not qualify for California practice privilege because they are not from a "substantially equivalent" state, do not have the 150 semester units of education, and have not been practicing long enough to meet the requirement of practicing public accountancy for four of the last ten years. Under this option, these CPAs would be able to practice in California.
- This option is consistent with the overarching principle that state boards should trust one another to appropriately license and appropriately discipline.
- By eliminating all educational requirements for California practice privilege, this option would address the concern that California has higher standards for practice privilege than for licensure.

### **Disadvantages:**

- Eliminating the substantial equivalency requirements could permit individuals with inadequate education to practice in California. It was noted that some states (for example Delaware) license individuals with only an Associate of Arts degree.
- This option, by itself, would not make it easier for California CPAs to practice in other states.
- This option is inconsistent with the UAA and the cross-border provisions in most other states.

**Option 2:** Modify the Board's substantial equivalency requirements so that out-of-state CPAs with current, valid licenses can practice in California if they meet the requirements of either Section 5092 or 5093 of the Business and Professions Code (not just Section 5093 as in current law).

**Advantages:**

- This option would allow most out-of-state CPAs to practice in California without making practice privilege available to individuals with only an Associate of Arts degree.
- This option would address the concern that California has higher standards for practice privilege than for licensure.

**Disadvantages:**

- This option, by itself, would not make it easier for California CPAs to practice in other states.
- This option is inconsistent with the UAA and the cross-border provisions in most other states

**Option 3:** Eliminate current substantial equivalency requirements. Instead permit CPAs with current, valid licenses issued by other states to practice in California only if California CPAs are permitted to practice in their states. For example, allow CPAs from Arizona to practice in California only if Arizona allows California CPAs to practice there. This option would need a delayed effective date to allow other states time to make the necessary law changes.

**Advantages:**

- Once other states enact the necessary law changes, this option would make it easier for California CPAs to practice in other states.
- This option is built on the underlying assumption that other states appropriately license and appropriately discipline, and is consistent with the overarching principle of mutual trust among state boards.

**Disadvantages:**

- It could be logistically challenging to work out such agreements with other states, and it may be very difficult for all of the other states involved to pursue appropriate law changes.
- This option is inconsistent with the approach to cross-border practice in the UAA and in the laws of most other states.
- In some instances, this option could allow CPAs with inadequate education to practice in California.

**Option 4:** Do not modify the practice privilege laws related to substantial equivalency. Instead, pursue a law change to sunset Pathway 1 at a specified future date (for example January 1, 2012).

Licensing statistics show that Pathway 2 has become an increasingly popular choice among applicants for licensure. In 2002 when the "pathways" were created, there were more than three times as many applicants licensed under Pathway 1 compared with Pathway 2. Since that time, the number of licenses issued under Pathway 1 has steadily declined, while the number of licenses issued under Pathway 2 has steadily increased. In 2005, Pathway 2 became the more popular licensing option (1549 licenses were issued under Pathway 2, while 1143 licenses were issued under Pathway 1). The difference in the number of applicants seeking licensure under the two pathways further increased in 2006 (1616 licenses were issued under Pathway 2 compared with only 888 licenses under Pathway 1).

**Advantages:**

- This option would allow California to become a fully substantially equivalent state making it easier for all California CPAs to practice in other states that have enacted the UAA cross-border practice provisions.
- This option would address the concern that California has higher standards for practice privilege than for licensure.
- This option is consistent with the UAA.

**Disadvantages:**

- This option, in itself, would not make it easier for out-of-state CPAs to practice in California.
- This option would affect licensure as well as practice privilege requirements and would make entry into the profession more difficult at a time when there is a shortage of CPAs. For this reason, it may be difficult to obtain support for this legislation.

**CROSS-BORDER PRACTICE BY FIRMS**

**OVERVIEW**

Concerns about cross-border practice by firms increased with the development of the Practice Privilege Program. Most of the practice privilege laws were enacted in 2004 with an operative date of January 1, 2006. During 2005, the Practice Privilege Task Force met to develop regulations for implementing the program. At the Task Force's March 2005 meeting, it was noted that problems could arise in 2006 when the practice privilege laws replaced the temporary/incidental practice provision that for many years

had allowed out-of-state practitioners and firms some flexibility with regard to cross-border practice in California. The concern was that the practice privilege laws in effect at that time provided for cross-border practice only by individuals and contained no mechanism for cross-border practice by firms.

Tax practitioners in particular communicated concern to the Task Force that, without registering their firms, they would no longer be able to prepare tax returns for clients who had moved to California. In response to this problem, in 2005, Business and Professions Code Section 5054 was enacted creating a very narrow exception from practice privilege, licensure, and firm registration requirements so that out-of-state CPAs and CPA firms could prepare tax returns for California residents. (See Attachment 4.)

In 2006, when the California practice privilege laws became operative, it became clear that this exception was too narrow. Section 5054 did not permit out-of-state CPAs and their firms to prepare corporate and partnership tax returns or to provide financial statement services to California clients. To provide these services the practitioner would need a practice privilege and the firm would have to register. It was also noted that many firms found it difficult to meet California's firm registration requirements. In order to register, the firm would need a California licensee as a partner or shareholder. In addition, California law permits registration of firms as either professional corporations or as partnerships, including limited liability partnerships (LLPs), while some out-of-state firms are organized differently, for example as Limited Liability Companies (LLCs).

To address these concerns, in 2006, Sections 5035.3, 5096.12, and 5096.13 were added to the California Accountancy Act by AB 1868 (see Attachment 5). These statutes allow an out-of-state firm to practice through a practice privilege holder who, on his or her notification form, is required to provide specific identifying information about the firm such as (a) firm name, (b) address, (c) phone number, and (d) federal taxpayer identification number. When practicing under this provision, the firm consents to the Board's jurisdiction. From October 2006 through April 2007, more than 2,000 practice privilege holders identified firms as practicing through their practice privileges.

As discussed above, the CPC and the Board recently considered the UAA Exposure Draft proposing changes to enhance mobility. A key component of the proposal is the elimination of the notification requirement for individual practice privilege. The Exposure Draft also includes proposed modifications related to firms intended to provide for consumer protection and make the UAA's firm registration provisions compatible with a "no notification" environment.

Because the current firm cross-border practice provisions in California law are tied to notification, some modifications will need to be made if the Board decides to pursue a law change to modify or eliminate practice privilege notification requirements. Below are some options for making these modifications. It should be noted that if the CPC and

the Board decide to retain the current notification requirement, no law changes related to firm cross-border practice would be needed.

## OPTIONS FOR CONSIDERATION

**Option 1:** Adopt the proposed provisions for firm registration in the UAA Exposure Draft.

For a firm that has an office in the state, the Exposure Draft requires registration if it either provides attest services or uses CPA in the firm name or does both. If the firm does not have an office in the state, it must register if it provides audit services for a client with a home office in the state.

The Exposure Draft also permits firms that do not have an office in the state to provide services in the state without registration provided the services are performed by a practice privilege holder and other specified requirements are met. To perform audits for a client that does not have its home office in the state or compilations and reviews for a client that has its home office in the state the firm must participate in a peer review program and comply with the firm ownership provisions in the UAA. Other services may be provided if the firm may lawfully provide those services in the state where the practice privilege holders have their principal place of business.

These requirements represent a significant departure from current California firm registration requirements which are not based on performing attest services or using the CPA title.

### **Advantage:**

- This option could ease cross-border practice if all states enacted the UAA provisions for firm registration.

### **Disadvantages:**

- Because the UAA provisions are very complex and lack key definitions (for example, definition of "home office"), it would be difficult for the Board to communicate the substance of and necessity for these law changes to the Legislature.
- This proposal would involve significant changes in California's firm registration requirements that are unrelated to cross-border practice. There appears to be no need for these changes, and implementation could be challenging for staff and licensees.
- The UAA's registration requirement for firms without an office in the state applies to audits but not reviews. The Board at its May 10-11, 2007, meeting indicated that it did not support this approach and believed the same requirements should apply to both of these attest services.

- did not support this approach and believed the same requirements should apply to both of these attest services.

**Option 2:** Modify current law to permit cross-border practice by firms with no notification provided the firm only performs the services it is legally authorized to perform in the state where it is registered and performs these services only through a California practice privilege holder or a California licensee.

**Advantages:**

- This option would ease cross-border practice by firms.
- By eliminating notification and registration requirements, this option could streamline administration and reduce unnecessary record-keeping.
- This option is consistent with the principle that state boards should trust one another to appropriately license and appropriately discipline.

**Disadvantages:**

- Since audits are signed in the name of the firm, under this option there is the risk that the consumer might not know the identity of a practitioner causing consumer harm and therefore may not be able to communicate this information to the Board. This disadvantage is exacerbated by the fact there may be more than one firm with the same name.
- It can be argued that this option provides less consumer protection than the UAA Exposure Draft with respect to audits by firms with home offices in this state.

**Option 3:** Create an "alternative firm registration" process as described below.

This "alternative firm registration" process would require that one partner or shareholder who qualifies for practice privilege provide the Board with his/her name, state of principal place of business, license number, and the identifying information about the firm that is currently required for the firm to practice through a practice privilege holder. That partner or shareholder would then serve as the contact person for the firm's practice in California. Other employees of the firm who qualify for practice privilege could then practice in California without notice. This "alternative firm registration" would only be available to a firm that does not have a California office.

**Advantages:**

- This option retains many of the features of the current approach to firm cross-border practice that appears to be working well.

- Since the Board would have identifying information about the firm and a contact person in the firm, it can be argued that this option permits the Board to be more responsive to consumer inquiries and/or complaints than Option 2.
- Because this option retains key features of current law, it may be easier to pursue the necessary legislation.

**Disadvantages:**

- It can be argued that any form of notification/registration interferes with mobility.
- It has been suggested that since there is automatic jurisdiction and complaint-driven enforcement, any form of notification/registration is unnecessary record-keeping.

**Option 4:** Provide an alternative firm registration, as described in Option 3, but only for attest services. Non-attest services could be provided without any form of firm registration.

**Advantages:**

- By requiring "registration" for attest services, this option focuses on the area of greatest consumer risk and provides better public protection than Option 2.
- By permitting out-of-state firms to provide tax and other non-attest services in California without registering, this option would more readily facilitate mobility better than Option 3.
- Like Option 3, this option retains key features of current law.

**Disadvantages:**

- It can be argued that any form of notification/registration interferes with mobility.
- It has been suggested that since there is automatic jurisdiction and complaint-driven enforcement, any form of notification/registration is unnecessary record-keeping.

**CONCLUSION:**

The issues and options in this analysis are provided to assist the CPC and the Board in developing policy direction related to cross-border practice. This direction will guide staff and legal counsel in drafting statutory amendments for consideration at future meetings.

Prepared July 9, 2007

1 SECTION 3  
2 DEFINITIONS

3  
4 When used in this Act, the following terms have the meanings indicated:

- 5  
6 (a) "AICPA" means the American Institute of Certified Public Accountants.  
7  
8 (b) "Attest" means providing the following financial statement services:  
9  
10 (1) any audit or other engagement to be performed in accordance with the  
11 Statements on Auditing Standards (SAS);  
12  
13 (2) any review of a financial statement to be performed in accordance with the  
14 Statements on Standards for Accounting and Review Services (SSARS);  
15  
16 (3) any examination of prospective financial information to be performed in  
17 accordance with the Statements on Standards for Attestation Engagements  
18 (SSAE); and  
19  
20 (4) any engagement to be performed in accordance with the standards of the  
21 PCAOB  
22

23 The standards specified in this definition shall be adopted by reference by the  
24 Board pursuant to rulemaking and shall be those developed for general  
25 application by recognized national accountancy organizations, such as the  
26 AICPA, and the PCAOB.  
27

28 *COMMENT:* Subject to the exceptions set out in Section 14, these services are restricted to  
29 licensees and CPA firms under the Act and licensees can only perform the attest services through  
30 a CPA firm. Individual licensees may perform the services described in Section 3(f) as  
31 employees of firms that do not hold a permit under Section 7 of this Act, so long as they comply  
32 with the peer review requirements of Section 6(j). Other attestation services are not restricted to  
33 licensees or CPA firms; however, when licensees perform those services they are regulated by  
34 the state board of accountancy. See also the definition of Report. The definition also includes  
35 references to the Public Company Accounting Oversight Board (PCAOB) which make it clear  
36 that the PCAOB is a regulatory authority that sets professional standards applicable to  
37 engagements within its jurisdiction.  
38  
39

- 40 (c) "Board" means the \_\_\_\_\_ Board of Accountancy established under Section 4 of  
41 this Act or its predecessor under prior law.  
42

43 *COMMENT:* The general purpose of references to prior law, in this provision and others below,  
44 is to assure maximum continuity in the regulatory system, except where particular changes are  
45 specifically intended to be brought about by amendment of the law.

Distributed at  
November 15, 2007  
CPC Meeting

Revised on 11/13/07

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the each state that issued in which he or she holds a the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

(6) Shall not perform any services in this state under cross-border practice that the individual is not legally authorized to perform in the individual's state of principal place of business.

~~(f) A practice privilege expires one year from the date of the notice, unless a shorter period is set by board regulation.~~

~~(g) (d)~~ (1) No individual may practice under a cross-border practice in this state privilege without prior approval of the board if the individual has, ~~or acquires at any time during the term of the practice privilege,~~ any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or greater within the last 10 years.

(E) Any other conditions as specified by the board in regulation.

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

(e) An individual who acquires any disqualifying condition under Section 5096(d)(2) while practicing under cross-border practice in this state shall cease practicing immediately in this state and shall not resume practice in this state without prior approval of the board. OR

(e) An individual who acquires any disqualifying condition under Section 5096(d)(2) while practicing under cross-border practice in this state shall immediately notify the board in writing of the nature and details of the disqualifying condition.

*Comment: The term "practice privilege" is being replaced with the term "cross-border practice" to alleviate confusion throughout the language regarding the proposed no notice/no fee/no escape requirement in this state and use of the term cross-border is consistent with the UAA.*

**Subject:** CPIL Comments regarding Cross-Border Practice

**From:** "Julie D'Angelo Fellmeth" <julied@sandiego.edu>

**Date:** Tue, 13 Nov 2007 16:50:35 -0800

**To:** Mary LeClaire <mleclaire@cba.ca.gov>, Angela Chi <angelac@wcac-cpa.com>, Bill Macaloney <jaxmarkets@aol.com>, Robert Petersen <bpetersencpa@yahoo.com>, Paula Bruning <pbruning@cba.ca.gov>, David Swartz <david.swartz@gsbccpa.com>, Donald Driftmier <dadriftmier@vtdcpa.com>, Kathryn Rubenacker <kathryn.rubenacker@gsbccpa.com>, Leslie LaManna <lesliejl@aol.com>, Lorraine Hariton <lorraine@xeolux.com>, Richard Charney <richar5507@aol.com>, Tracy Garone <>tag@stoughtoncpa.com>, Ross Warren <Ross.Warren@asm.ca.gov>, Sally Flowers <zunigaflowers@yahoo.com>, Stuart Waldman <stuartwaldman@earthlink.net>, Matthew Powell <mpowell@wilkefleury.com>, Olaf Falkenhagen <prekel@aol.com>, Randy Miller <rmiller@mngcpa.com>, Stephen Friedman <taxwizz@sbcglobal.net>, Bruce Allen <cpalobby@calcpa.org>, Jeannie Tindel <jeannie.tindel@calcpa.org>, Ed Beranek <ed@rebcpas.com>, Dorothy Calegari <dcalegari@gosca.com>, Kristine Caratan <kristine.caratan@mossadams.com>, Brian Annis <Brian.Annis@sen.ca.gov>, Michael Duffey <michael.duffey02@ey.com>, Anne Mox <amox@cba.ca.gov>, George Ritter <George\_Ritter@dca.ca.gov>, David Tolkan <david@dtaxpro.com>, Liza Walker <lwalker@cba.ca.gov>, "Gary O'Krent" <bluok@aol.com>, Kris McCutchen <kmccutchen@cba.ca.gov>, Richard Robinson <rrobinson@rrassoc.com>, Harold Schultz <hal.schultz@cox.net>, Laura\_Zuniga@dca.ca.gov, Neal West <neal.west@mossadams.com>, Arthur Berkowotz <artbcpa@aol.com>, Gary Bong <gbong@bbrcpa.com>, Roger Bulosan <rbulosan@lautze.com>, Harish Khanna <harish.khanna@us.pwc.com>, Antonette Sorrick <antonette\_sorrick@dca.ca.gov>, Michele Santaga <msantaga@cba.ca.gov>, Bill Gage <bill.gage@sen.ca.gov>, Carol Sigmann <csigmann@cba.ca.gov>, Dan Rich <drich@cba.ca.gov>, Greg Newington <gnewington@cba.ca.gov>, Melody Friberg <mfriberg@cba.ca.gov>, William Sturgeon <sturg@sbcglobal.net>, Pete Marcellana <pmarcellana@cba.ca.gov>, Mary Gale <mgale@cba.ca.gov>, Michelle Mills <Michelle.Mills@cdph.ca.gov>, Conrad Davis <cdavis@ueltzen.com>, Michelle Elder <melder@eldertax.com>, Peggy Ford-Smith <peggy@fsamarin.com>, khansen@kpmg.com, Bronwyn Hughes <bhughes@csea.org>, James Lee <JamesLeeCPA@att.net>, Jeffrey Martin <jmartincpaca@aol.com>, Steven Mintz <smintz@calpoly.edu>, Morris Miyabara <dtaxcat@sbcglobal.net>, Kathleen Platz <kplatz@schwartzplatz.com>, Lenora Taylor <ltaylorlaw@earthlink.net>, Sally Anderson <sarah.anderson@ey.com>, Manuel Ramirez <mramirez@ramirezintl.com>, Meedie Young <info@ramirezintl.com>, Patti Bowers <pbowers@cba.ca.gov>, Rudy Bermudez <rudybermudez@msn.com>, eweichel@sandiego.edu

**CC:** eh4@sbcglobal.net

Dear CBA Members:

Attached please find CPIL's comments and exhibits on cross-border practice. Thank you in advance for reading these materials.

Sincerely,

Julie D'Angelo Fellmeth  
Ed Howard

Julianne D'Angelo Fellmeth  
Administrative Director  
Center for Public Interest Law

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[www.cpil.org](http://www.cpil.org)

At 11:50 AM 11/13/2007, Mary LeClaire wrote:

Please replace pages 9 & 10 to the September 2007 Board minutes under Board Agenda Item II.A. The correction to the second bullet at the top of page 9 is in quotations below:

Any licensed firms and sole proprietors who perform Statements on Standards for Accounting and Review Services "8" engagements as the highest level of work.

Please let me know if you have any questions. Thank you.

--

Mary LeClaire  
Executive Analyst  
California Board of Accountancy  
(916) 561-1719  
[mleclaire@cba.ca.gov](mailto:mleclaire@cba.ca.gov)

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CPC Agenda Item III  
November 15, 2007

Board Agenda Item IX.C.4  
November 15-16, 2007

**MEMO TO: Members of the California Board of Accountancy**

**FROM: Julianne D'Angelo Fellmeth**  
**Administrative Director**  
**Center for Public Interest Law**

**Ed Howard**  
**Senior Counsel**  
**Center for Public Interest Law**

**DATE: November 12, 2007**

**Re: (CPC Agenda Item III; Full Board Agenda Item IX.C.4) Should Possibly Unqualified, Incompetent, And Criminal Individuals From Out-Of-State Claiming To Be CPAs Be Allowed To Practice Accountancy Without Any Scrutiny By This Licensing Board Until They Ruin The Lives Of California Consumers?**

Thank you, in advance, for taking the time to review this memo and the accompanying exhibits.

**The Center for Public Interest Law**

The Center for Public Interest Law (CPIL) is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For 27 years, CPIL has studied occupational licensing and monitored California agencies that regulate businesses, trades, and professions, including the California Board of Accountancy (CBA). CPIL's Administrative Director has participated actively on several CBA task forces, including its Task Force on Audit Standards and Practices which was created in 2002 to formulate recommendations for reform of accounting regulation in response to the multi-billion-dollar Enron/Andersen/WorldCom scandals and whose work resulted in the enactment of three bills reforming California's regulation of the accountancy profession the same year.<sup>1</sup>

<sup>1</sup> The bills were AB 270 (Correa and Figueroa); AB 2873 (Frommer); and AB 2970 (Wayne).

## Summary of the Problem and the Memo

From the CBA's agenda and supporting materials it appears as though the CBA is for the second year in a row poised to approve an effort to ease cross-border practice by making it impossible for the CBA to check up on the competence, qualifications, and even criminal record of those claiming to be out-of-state CPAs before those out-of-state individuals ruin the financial well-being of Californians.

This memo explains why this controversial proposal — rejected by the Legislature just last year when it forced amendments to AB 1868 (Bermudez) — is poor public policy and directly at odds with the CBA's core mission, indeed its very reason for existence.

More specifically, this memo provides (i) an explanation as to why advance notice is essential to any self-respecting consumer protection program; and (ii) exhibits for the edification of the CBA, including the *Los Angeles Times* coverage of the effort last year;<sup>2</sup> and letters of concern from the California Attorney General's Office, Consumers Union, and former Senator Liz Figueroa.<sup>3</sup>

As you read this memo please recall: the CBA practice privilege program purportedly frustrating cross-border practice consists of payment of at most \$100 and the 20 minute completion of an online form.<sup>4</sup>

If — against all logic — the form is in fact such an impediment, the form can be changed.

### **A. AB 1868 (Bermudez)**

Just last year the Legislature rejected the proposal the CBA is poised to urge on it again. AB 1868 (Bermudez) — before amendments were forced upon it — would have eliminated the then less-than-one-year-old requirement that out-of-state individuals claiming to be CPAs obtain a practice privilege by taking twenty minutes to fill out an online form and paying at most \$100.

Instead, anyone who resided out of state who claimed to be a CPA would have been able to provide "tax services" (undefined) to Californians with no notice at all to the CBA, thus preventing the CBA from checking into whether they were, in fact, a CPA, let alone whether their licenses were suspended or whether they were a criminal.

The current practice privilege program has been in force for all of about sixteen months.

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<sup>2</sup> The *Los Angeles Times* coverage is attached as Exhibit A.

<sup>3</sup> Attached as Exhibit B.

<sup>4</sup> In the vast majority of instances, the fee will be only \$50 because the vast majority of out-of-state CPAs are not signing audit reports, which requires the higher \$100 fee.

**B. What Others Say About The Idea Of Eliminating Notice To The CBA.**

Mr. Bruce Allen of CalCPA succinctly makes the best case for why the CBA must — if it is to make any claim to placing the interests of consumers above the mere theoretical convenience of CPAs — obtain advance notice of an out-of-state individual's intent to practice in this State as a supposed CPA when in 2005 he wrote:

**"The new practice privilege will provide [the CBA] with increased opportunity to protect California consumers by letting [the CBA] know who is practicing in California ...**

**"The CBA has repeatedly refused to exempt tax practice from the notification requirement as tax practitioners can cause tremendous consumer harm. In fact, the CBA has had difficulty with CPAs licensed to practice in bordering states that have substantial tax practices in California."**

— Mr. Bruce Allen, October 1, 2005, *California CPA* (full article is attached as Exhibit C)<sup>5</sup>

Exactly so. In this regard, Mr. Allen in 2005 agreed with Consumers Union in 2006 when the respected publisher of *Consumer Reports*, in opposing last year's AB 1868, wrote:

**"The Board would no longer have the statutory authority to keep known 'bad apples' from providing California CPA services until after an incident sufficient to warrant discipline has occurred and been proven."**

— Consumers Union, letter opposing AB 1868 (Bermudez) (attached as Exhibit B)

Then-California Attorney General Bill Lockyer agreed and joined CPIL, Consumers Union, and the Foundation for Taxpayer and Consumer Rights in opposing the portion of AB 1868 that did what the CBA is considering again (see opposition letters attached at Exhibit B).

When considering whether the CBA should through AB 1868 dispense with obtaining notice of an out-of-state individual's intent to practice here as a supposed CPA, former Senator Liz Figueroa — Chair of the Senate Business and Professions Committee for nearly a decade — wrote:

---

<sup>5</sup> Mr. Allen has said in the past that this quote is taken out of context. The entire article is attached as Exhibit C so CBA members can judge for themselves whether it is taken out of context.

**“Far more important to me, personally, is the CBA’s extremely weak justification for [eliminating the prior notice to the CBA]. As repeated several times over a number of board meetings, the industry claims, and the CBA acquiesces, that enforcement after the fact will solve any possible problems from this open-ended permission for non-licensees to practice [in California] without the CBA’s knowledge.**

**I cannot state this firmly enough. The CBA has the smallest and least well-staffed enforcement division of any comparably sized board in the state. This is an ongoing and enormous problem made worse as each new accounting scandal moves into the headlines ... [The CBA] is almost entirely incapable of assuring the public that it has anything near the resources to enforce its existing laws. Arguing that AB 1868’s new, quite significant abdication of prior regulatory authority will be effective because the CBA will be able to enforce any violations after the fact makes no sense.”**

— Former Senator Liz Figueroa, Senate Business and Professions Chair for eight years, letter to Governor Schwarzenegger, May 18, 2006 (attached as Exhibit B)

Moreover, the expert staff policy analysts at the Senate Business and Professions Committee observed the bizarre double standard created by the CBA abandoning any effort to check on the qualifications of out-of-state individuals claiming to be CPAs before they potentially ruin the lives of our neighbors:

**“Accountants from outside California should not be treated more favorably, or be given easier access to practice accountancy in California than California accountants are.**

— Senate Business and Professions Committee analysis of AB 1868 (2006)

**C. Eliminating The Ability Of The CBA To Check On The Qualifications, Competence And Criminal Record Of Out-Of-State Individuals Claiming To Be CPAs Is Flatly Inconsistent With Its Mission And Vision.**

The CBA’s “Mission Statement” is as follows:

**“The mission of the California Board of Accountancy is to protect the public welfare, particularly consumers, by ensuring that only qualified persons and firms are licensed to practice public accountancy and that appropriate standards of competency and**

**practice, including ethics, objectivity and independence are established and enforced.”**

([http://dca.ca.gov/cba/board\\_info/mission.shtml](http://dca.ca.gov/cba/board_info/mission.shtml))

The beginning of the CBA’s “Vision” statement reads as follows:

**“The vision of the California Board of Accountancy (CBA) is to be the premier regulatory agency that provides exemplary consumer protection, fosters high ethical standards, promotes continuous quality improvement in the practice of public accountancy, and operates with maximum efficiency.**

**Created by statute in 1901, the California Board of Accountancy’s legal mandate is to regulate the accounting profession for the public interest by establishing and maintaining entry standards of qualification and conduct within the accounting profession, primarily through its authority to license.”**

([http://dca.ca.gov/cba/board\\_info/mission.shtml](http://dca.ca.gov/cba/board_info/mission.shtml) — **emphasis supplied**)

Notice the underscored language. The way the CBA protects consumers is “by establishing and maintaining **entry standards** of qualification and conduct within the accounting profession.” It does *not* say “by waiting until a consumer is grievously and irreparably harmed and thereafter checking up on the supposed CPA.”

These values are echoed in California Business and Professions Code section 5000.1, which reads in full:

**“Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”**

Next, consider how the CBA describes its own history:

**“From its inception in 1901, by statute the California Board of Accountancy (Board) has been charged with regulating the practice of accountants the public could rely upon as being competent...**

**From the beginning of the 20th Century, consumer protection has been the undertaking of the Board. A December 1, 1913, letter to Governor Hiram Johnson signed by Secretary-Treasurer Atkinson states, ‘For the further protection of the business public, a statute should be enacted regulating the practice of public accounting so as to require all persons holding themselves forth as being qualified to obtain from this Board the certificate of certified public accountant.**

**Public accounting is now generally recognized in business to be of such importance that a standard should be set by public authority and no one allowed to practice without proper credentials."**

([http://dca.ca.gov/cba/board\\_info/history.shtml](http://dca.ca.gov/cba/board_info/history.shtml) — underscoring added)

The underlined passage needs repeating: **"[N]o one [should be] allowed to practice without proper credentials."**

Now, measure these consumer protection values against just two of the "disadvantages" listed by CBA staff to the options that involve eliminating the requirement that the CBA be able to check into the qualifications, competence and criminal background of those claiming to be CPAs before those individuals ruin the lives of Californians:

**"Under this option, the Board would be unable to perform any 'front end' checks to make sure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime ...**

**This option would permit unrestricted practice by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline."**

(Cross-Border Practice Issues, provided to the CBA for the November 15-16, 2007 meeting, at pp. 3-4)

How can the CBA, mindful of its primary mission and vision, seriously consider a proposal that would **"permit unrestricted practice by practitioners who have been convicted of a crime"**?

How can the CBA, mindful of its primary mission and vision, seriously consider a proposal that will prevent itself from making sure that someone who claims to be a CPA in good standing really is a CPA in good standing?

How can the CBA, mindful of its primary mission and vision, expose Californians to such a risk *when all that is currently required is a simple, online form and payment of at most \$100* to possibly prevent such harm; to prevent the financial lives of Californians being forever ruined by those who claim to be CPAs in good standing but might be criminals instead?

Answer: It cannot. This, respectfully, is not a hard call. Exactly none of the undocumented, rumored inconveniences that lay at the purported basis of the proposal to blindfold the CBA, preventing it from doing for out-of-state residents what it would insist upon for those who happen to live here, can possibly justify this regulator saying, "We will simply take the word of anyone who lives out of state who claims to be a CPA. Their word that they are licensed, are not a criminal, are not on probation – their word

will definitively be good enough for us ... until they ruin someone's life. Then we will investigate."

**D. Bizarrely, The Proposal To Eliminate The CBA's Ability To Verify That Someone Who Claims To Be A CPA Really Is A CPA Is A Proposal That Is Inconsistent With The CBA's Own Advice To California Consumers.**

If a "no notice" proposal is adopted, the CBA will be violating its own commonsense advice to California consumers. Consider the advice the CBA currently provides to California consumers about how to select a CPA for themselves. Does the CBA suggest that consumers should roll the dice and wait until their lives are ruined before checking into the claimed qualifications of CPAs?

No. Here is what this CBA suggests:

**"When selecting a CPA, you should consider the following:**

- **Check the license status from our Web License Lookup or call the California Board of Accountancy at (916) 263-3680. Specifically, make sure the license is current and active (renewed with continuing education).**
- **Check whether there have been any enforcement actions against the licensee and how long he or she has been licensed.**
- **Interview the prospective CPA either by telephone or in person. A common inquiry is "what type of accounting work do you typically perform?" Compare the CPA's experience to your service needs."**

(<http://www.dca.ca.gov/cba/consumers/slectcpa.shtml>)

Thus, the CBA clearly advises consumers to check up on those who claim to be CPAs before hiring them.

Here is the CBA's advice for how to deal with people claiming to be CPAs on the Internet:

**"It is now possible to purchase public accounting services on the Internet. While this appears to be a convenient way to access a broad range of services, it is important to 'do your homework' before selecting a practitioner. Keep in mind that because Internet practice involves no face-to-face client contact, it may be easier for unqualified persons to masquerade as licensees. Also, remember a**

practitioner offering services on the Internet may be physically located anywhere in the world ...

- **Keep in mind that if you encounter a problem with an accountant who is not licensed by the California Board of Accountancy, the Board probably will not be able to assist you.**
- **Check the status of the license by using our Web License Lookup or call the California Board of Accountancy at (916) 263-3680. Make sure the practitioner holds a current California license with active practice rights. Also inquire whether there have been any enforcement actions against the practitioner."**

(<http://www.dca.ca.gov/cba/consumers/specmess.shtml> — emphases supplied)

It is impossible to imagine that, whereas it is good advice for lay consumers to **"do their homework before selecting a practitioner,"** the CBA charged with protecting that very same consumer should not have the opportunity to do precisely the same kind of "homework."

It is impossible to imagine that, whereas an individual lay consumer should **"check the license status"** and **"check whether there have been any enforcement actions against a licensee,"** the CBA charged with protecting that same consumer as its primary mission should not have a chance to do precisely the same thing.

The CBA ominously warns: **"Keep in mind that because Internet practice involves no face-to-face client contact, it may be easier for unqualified persons to masquerade as licensees."**

Once the "no notice" proposal is implemented, it is *caveat emptor* for California consumers. They will no longer be able to consult the CBA's website to differentiate between those who are in fact licensed CPAs in good standing in another state and those who just claim to be CPAs.

Yet, though the CBA acknowledges this risk, it is poised to adopt a policy that prevents it from checking under the mask even as it warns **"if you encounter a problem with an accountant who is not licensed by the California Board of Accountancy, the Board probably will not be able to assist you."**

The CBA's settled-upon strategy of trying to catch the culprit after the crime has occurred, after the fortunes or life savings have been lost, offers cold comfort to the California families who could have with the CBA's help avoided being victimized in the first place ... if the CBA had just followed its own commonsense advice.

**E. CBA Modus Operandi: Propose Legislative Changes First, Ask Questions Later.**

Just as it did in 2006 with AB 1868 (Bermudez), the CBA is about to vote to seek a fundamental departure from the way the CBA has done business since its inception nearly a century ago — to wait until a California family is grievously injured before checking on the credentials of claimed CPAs. Yet:

- Does the CBA have in hand — *before it votes* — a legal opinion in writing from either the Department of Consumer Affairs or the Attorney General analyzing whether and to what extent the CBA would actually be allowed to enforce its laws in another state, to the exclusion of the state board or state legal authorities? Answer: No.
- What about people who claim to be CPAs but are not? Or who were CPAs but who have already had their license revoked or who have resigned in their home state? Does the CBA have in hand — *before it votes* — a legal opinion from the Attorney General or Department explaining what, if any, power the CBA or the board of the home state would actually have over such non-CPA individuals if they ruin the financial lives of Californians? Answer: No.
- Does the CBA have in hand — *before it votes* — an analysis from any source whatsoever analyzing the enforcement records, resources, and capabilities of the other states whose disciplinary systems will now be the only way (supposedly) to reach out-of-state CPAs who hurt Californians? Answer: No.
- Does the CBA have in hand — *before it votes* — a legal opinion from the Department or the Attorney General detailing what administrative remedies would in fact be available to the CBA to make whole Californians damaged by the out-of-state individuals have allowed to practice in the State without any prior scrutiny? Answer: No.
- Does the CBA have in hand — *before it votes* — a legal opinion from the Department or the Attorney General explaining whether some of California's unique laws (e.g., those relating to the qualifications of who can sign an attest report, those requiring specific continuing education)<sup>6</sup> will be enforceable against out-of-state CPAs? Answer: No.
- Does it really need to be pointed out that a CBA that puts consumers first should not upturn a century-old practice of checking on the claimed credentials of

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<sup>6</sup> For example, the proposed legislative language deletes Business & Professions Code section 5096.5. That statute establishes important qualifications for out-of-state CPAs who sign attest reports. According to the comment in the materials staff provided (page 5 of the mark-up), this is deleted because California will instead forever yield to the laws in the other 49 states, whatever those laws may be where attest reports are concerned.

supposed CPAs without having satisfactory and detailed answers to each of these questions, when the current inconvenience amounts to a CPA – *a CPA!* – filling out a single form and paying a maximum of \$100 to practice without limitation for a year in one of the world’s largest markets? Answer: To be determined.

**F. The Arguments of the Proponents All Lack Merit.**

**1. “Those with a valid driver’s license can drive anywhere.”**

No one should be persuaded by a comparison to driver’s licenses, unless they believe that sixteen-year-olds should, as a matter of right, be able to provide tax and attest services by passing a driver’s license-level exam.

To compare the qualities of maturity, education, trustworthiness, competence required of CPAs to those of teenagers is to illustrate how far the proponents must reach for support.

**2. “The current practice privilege frustrates cross-border practice.”**

This has never been actually studied or verified in any way. None. The CBA has not a single study or analysis documenting this. The CBA does not even have such a written analysis from a biased source, let alone an unbiased one. It is a raw assertion.

This cannot be understated. The CBA is a regulatory agency. Its appointees take an oath. To be worthy of the public trust reposed in it, it should of course only approach significant changes on the basis of hard evidence and data not assertions no matter how confidently or repeatedly asserted.

And the claim is entirely counter-intuitive. Any out-of-state person who wants to practice in the sixth largest economy in the world without limitation for a full year will not be deterred from doing so by the annual completion of a simple, online form and the payment of \$100.

*These are, after all, CPAs, used to filling out highly complex tax forms.*

Moreover, last year the Legislature addressed the problems with firm registration. New Business and Professions Code section 5096.12 entirely exempts out-of-state CPA firms from the California firm registration requirement when they practice public accountancy in California through a CPA employee who secures a practice privilege for up to \$100.

Thus, firm registration is now entirely unnecessary for an out-of-state firm whose CPA employee practices in California under a practice privilege.

There were some other minor problems with the practice privilege but they were fixed last year. AB 1868 as amended resolved the problem of out-of-state and foreign CPAs who wish to practice public accountancy in California. They now have two options: (1) they can practice under the “temporary and incidental” exception — so long as their

practice is actually “temporary” and “incidental to” their practice in their home state or country; or (2) they can get a practice privilege and offer any public accountancy services in California for a year.

3. **“Easing cross-border practice will allow greater mobility of CPAs.”**

This assumes that the out-of-state individuals who will cross the border are, in fact, CPAs. Indeed, every argument made in defense of the “no notice” proposal assumes that no one out-of-state will (in the words of the CBA’s own website) “masquerade” as a CPA.

To repeat: Arguably the worst consequence of the “no notice” program is that California consumers will no longer be able to consult the CBA’s website to differentiate between out-of-state CPAs who are in fact CPAs and out-of-state people who may not be. They will be left on their own, “comforted” by the fact that if the non-CPA does hurt them, the CBA will figure out some as-yet-unspecified way to get some sort of as-yet-unspecified relief via as-yet-unspecified means.

Letting someone operate on a California patient based only on an utterly unchecked claim that they are trained, in good standing, and competent is simply not as safe as ensuring — firsthand and beforehand — that he is minimally competent and not a criminal.

The same is true with accountancy, as the CBA’s advice to individual consumers makes clear.

4. **“After-the-fact discipline is sufficient to protect consumers.”**

If the out-of-state individual is not a CPA or is one whose license has already been revoked, then all of the after-the-fact administrative discipline taken against a license someone does not have means nothing and deters no wrongdoer.

Again: California consumers will no longer be able to go the CBA’s website to ensure that out-of-state accountants have filed a practice privilege under the current proposal.

And even if the perpetrator is in fact an out-of-state CPA, no after-the-fact administrative discipline against a license can restore to the California family their lost property, profits, life-savings, freedom, time, and reputation.

All this to relieve non-California CPAs of having to fill out an online form and pay at most \$100.

By the way, it is precisely *because* after-the-fact discipline is inadequate to prevent these life-shattering harms that we license in the first place; that we try *to prevent* these harms from occurring in the first place because they cannot be remedied by an Administrative Law Judge once they occur.

Or as the CBA itself warns: **“if you encounter a problem with an accountant who is not licensed by the California Board of Accountancy, the Board probably will not be able to assist you.”**

Moreover, the CBA’s administrative disciplinary process is complaint-driven. The CBA does not, for example, randomly inspect tax returns.

No complaint, no after-the-fact discipline.

Observe that consumers will in the majority of cases not be able to spot poor quality CPA services that professional members of the CBA would recognize as inferior immediately.

In other words, there is a vast zone between CPA practice that is simply inferior — but invisibly so to a lay consumer — and malpractice so egregious that even a lay consumer can recognize it, be damaged by it, and complain about it to the CBA, sparking an administrative process.

Indeed, most work that an elite CPA would recognize as simply bad does not rise to the level of being actionably bad by the CBA, even if it did receive a complaint about it.

Thus, if you rely solely on administrative discipline after-the-fact to ensure quality and integrity of the CPA brand, you will neither catch nor remedy the vast majority of harms that hurt consumers.

This is why the CBA has since the turn of the last century has (to quote the CBA’s website) protected consumers **“by establishing and maintaining entry standards of qualification and conduct within the accounting profession[.]”**

### **G. The CBA Has Become Just A Forum For Advancing The Agenda Of Those It Is Supposed To Be Regulating.**

Consider the record of the CBA in the last year and a half. It has:

- Undermined the public member majority established in AB 270 (Correa and Figueroa), enacted in 2002. CPAs can now dominate CBA committees, where the bulk of the Board’s work is done, undermining the whole intent of having a public member majority.
- Decided to seek decimation of the part of AB 270 that requires CPAs to report to the CBA in writing “any restatements of a financial statement and related disclosures by a client.” Such restatements are essentially an admission that prior statements contain material misrepresentations or omissions that are misleading to investors. The CBA obtained 1,574 in four years; *934 involved publicly traded companies*. The CBA’s rationale was that it has too few enforcement personnel but (i) at the time of this action the CBA was working to get 17 or 18 new

positions and (ii) its ability to recruit enforcement staff is being blocked by the CBA's own policy of requiring enforcement staff to be CPAs (see below).

- Undermined audit documentation requirements established in AB 2873 (Frommer). The statute is designed to require the creation and retention of audit documentation — a paper trail — so that the CBA can trace back wrongdoing in audits. The CBA changed its prior regulations so that CPAs can now change, delete, substitute, alter or destroy audit documentation for a 60-day period after the audit report is released ... *after the markets have relied on it.*
- Supported AB 1868 (Bermudez) in 2006. This CalCPA-sponsored, unsuccessful effort would have allowed out-of-state CPAs to provide “tax services” in California with no notice to the CBA, robbing the CBA of its chance to check into the qualifications of those claiming to be CPAs before they harm consumers and businesses; robbing the public of its ability to see on the CBA's website whether an out-of-state CPA has equivalent qualifications to those licensed in California. Negative *Los Angeles Times* coverage helped kill the bill. Then-Majority Leader Frommer spoke out against it on the Assembly Floor.
- CBA continues to insist that its investigators must be CPAs, making enforcement personnel nearly impossible to recruit, and thwarting more reasonable budget allocations to obtain more investigators. The MBC's investigators are not doctors. The State Bar's investigators are not lawyers. The CBA clings to this position anyway with the only result being a crippled enforcement program.

Next up is a proposed legislative change where, *in the words of your own staff*:

**“the Board would be unable to perform any ‘front end’ checks to make sure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime ...**

**This option would permit unrestricted practice by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline.”**

All to relieve an out-of-state resident claiming to be a licensed CPA in good standing of the inconvenience of filling out a form (as if CPAs never filled out forms) and paying at most \$100 for the privilege of obtaining an unlimited right to practice for a year in the world's sixth largest economy.

## **H. Conclusion.**

As Mr. Allen said in 2005:

**“The CBA has repeatedly refused to exempt tax practice from the notification requirement as tax practitioners can cause tremendous**

**consumer harm. In fact, the CBA has had difficulty with CPAs licensed to practice in bordering states that have substantial tax practices in California.”**

They *can* cause “tremendous consumer harm.” Mr. Allen asserts that there *have been* problems with CPAs from bordering states. All the current practice privilege requires of CPAs used to filling out some of the most complex financial forms known is filling out an online form (about twenty minutes) and payment of at most \$100.

Any minor inconvenience posed by the current practice privilege program cannot justify a policy that if approved will officially says to all Californians: **“It is the policy of the CBA to wait until your financial lives are destroyed before doing the kind of homework we recommend you do for yourself.”**

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**EXHIBIT A**

# CALIFORNIA

Monday, June 19, 2006

## Looser Rules Are Sought for Accountants

Regulatory officials take steps to promote the profession and roll back tough standards imposed in the post-Enron era.

By PETER NICHOLAS  
*Times Staff Writer*

SACRAMENTO — Just as Enron's top executives are facing prison, California officials are quietly starting to unravel consumer protections adopted in the wake of that company's collapse, watchdog groups and some state lawmakers said.

The Board of Accountancy, which licenses certified public accountants and accounting firms, is taking steps to roll back standards that demand rigorous documentation of certain changes made in the course of preparing an audit.

The board has been pushing a bill in the Legislature that could open the door for out-of-state accountants to offer tax shelters and practice in California without the oversight now required.

Equally worrisome to public interest groups who follow the 15-member board is a recent appointment made by Gov. Arnold Schwarzenegger.

The governor replaced Gail Hillebrand, considered to be the strongest voice for consumer protection and whose term had expired, with a partner in a law

firm that represents Big Four accounting firms.

Marcus McDaniel, an attorney in the firm Latham & Watkins, served for one month — in what is meant to be a “public” position set aside for people who are not accountants.

After a state lawmaker complained that the link to the Big Four posed a conflict of interest, Schwarzenegger's office said the appointment had “slipped through the cracks.” The governor's office earlier this month asked McDaniel to resign. It is unclear whom Schwarzenegger will appoint next.

The trends underscore the political clout of the accounting profession, whose members sought the changes in Sacramento and have given about \$500,000 to campaign funds that support Schwarzenegger's political agenda. An industry trade group has reported lobbying the governor's office this year on appointments to the accounting board.

Even as Schwarzenegger publicly moves to the left politically this campaign season, watchdog groups say his administration remains protective of the business interests that are a crucial part of his political base.

“This is a board that has become a wholly owned subsidiary of the accounting profession,” said Julianne D'Angelo Fellmeth, administrative director of the Center for Public Interest Law in San Diego, who has been monitoring the board for years. “It is supporting a bad bill without

[See Accounting, Page B12]

[Accounting, from Page B1] understanding it or analyzing it. It has voted to weaken auditing regulations that the board itself adopted only three years ago in the wake of Enron. This is a board that does not understand its public protection role."

But Ronald Blanc, the Board of Accountancy president, denied the board has abandoned its duty to protect the public.

"I believe that we are very conscious of consumer protection," Blanc said. "We totally understand our mission, and indeed our votes are rather overwhelming when we make a decision. We vet these things carefully. Some groups might not agree, but I don't see consumer interests are diluted or compromised at all."

The Enron collapse in 2001 spurred the Board of Accountancy to tighten regulations in hopes of preventing anything on that scale from happening again. Enron's questionable accounting practices were blamed partly for its demise.

The company concealed substantial amounts of debt through off-the-books partnerships, presenting a more positive view of its financial condition than was actually the case.

In public statements, the company said it had done so with the support of its accounting firm, Arthur Andersen, which destroyed documents after its audit.

After the scandal, the California board called for accounting firms to carefully document any material removed from an audit.

Firms were required to reveal who removed the material, what was removed and why it was done.

The change was meant to ensure credible audits, so investors and banks are able to make smart choices about where to put their money.

Last month, the board took a position in favor of scrapping that requirement. It will solicit public comment and hold more hearings before the change becomes official.

Hillebrand, now an attorney with the West Coast office of Consumers Union, said the change would be a step backward. "We've just seen the completion of criminal trials in Enron," she said. "And it's clear that more people got hurt than the company executives who defrauded the public. Anything we can do in California to avoid that happening again, we should be doing. If we have an existing requirement, we shouldn't be weakening it."

Board officials said in an interview that they merely want California to be aligned with standards put in place by an industry trade association and by a national nonprofit group that oversees firms that audit public companies.

Another post-Enron change was an attempt to better monitor what out-of-state accountants are doing in California. These accountants are now required to get a temporary permit to practice in the state.

But the industry complained that certain parts of the new regulation were a burden.

Now the board is backing a revision that would, in effect, deregulate a major portion of the accounting business, according to some state officials and watchdog groups.

In February, the board endorsed a proposal that would excuse out-of-state accountants who practice by phone, fax or Internet but who don't physically enter California, from going through the trouble of getting a permit.

They would be free to provide unspecified "tax services" without getting a California accounting license or even notifying the accounting board.

Assemblyman Rudy Bermudez (D-Norwalk) has folded this proposal into a bill that has already passed the Assembly and is due to be heard by a Senate committee today.

Explaining the board's rationale, Blanc said: "Accountants do a lot more than write up a tax return on the computer. They're involved in representing clients in audits and maybe getting IRS rulings for their clients. We wanted to allow businesses as well as individuals who wanted to use out-of-state accountants to be able to do so without a lot of administrative barriers put up."

Opponents warn that the open-ended law would invite out-of-state firms to promote suspect tax shelters without the board's knowledge. Blanc said he doesn't want that to happen.

Dubious tax shelters are a growing problem in California and cost the state about \$500 million a year in uncollected revenue, according to the Franchise Tax Board and officials. Last year, the Big Four firm KPMG reached a settlement with the U.S. Justice Department in which it agreed to pay \$456 million for its use of such tax shelters, thus avoiding criminal prosecution.

Should any kind of fraud arise, the accounting board would be hard-pressed to crack down, watchdog groups contend. An enforcement staff of five people has jurisdiction over 75,000 licensed accountants.

A state Senate analysis of the Bermudez bill concluded that the accounting board "has by far the smallest and least well-staffed enforcement division of any comparably sized consumer board in this state. This is an ongoing and enormous problem that is only made worse as each new accounting scandal moves into the headlines."

Atty. Gen. Bill Lockyer said: "You could imagine lots of bad things — abusive tax shelters — that would be permitted. Enforcement would be weakened... In light of the energy deregulation debacle, the savings and loan industry deregulation debacle,

the trucking industry deregulation debacle, why would you want to do another one?"

Bermudez said his intent is merely to allow, say, an out-of-state accountant — who may be a friend of the client — to file a tax return and provide other advice without too much hassle.

His bill is sponsored by the California Society of Certified Public Accountants, a trade group. In the last seven months, Bermudez has received \$2,500 in campaign contributions from the society. John Dunleavy, chief executive officer of the group, did not return calls for comment.

State records show Bermudez has also taken in \$8,800 in campaign donations from the Big Four accounting firms. Bermudez said in an interview that the contributions from the accounting industry are nothing extraordinary. "I think just about everybody has" contributed to his campaign fund, he said.

When the lessons of Enron were freshest, the consensus in Sacramento was that the bar needed to be tougher and more of an advocate for the public.

Under former Gov. Gray Davis, the accounting board's membership was changed in a way that diminished the industry's clout. Licensed accountants became a minority on the board. What are known as "public" members — people who are not CPAs — became the majority.

State Sen. Liz Figueroa (D-Fremont) pushed legislation in 2002 bringing about that change. More recently, she wrote the letter to Schwarzenegger objecting to the McDaniel appointment and voicing concerns about what she describes as the board's pro-industry tilt.

Figueroa says it defeats the purpose to make "public" members a majority on the board if Schwarzenegger appoints people whose firms represent members of the accounting industry.

Campaign money from the accounting profession has been flowing into Schwarzenegger's political accounts as well. Price-waterhouseCoopers has given \$119,000 to campaign funds promoting the governor's political causes; KPMG has given more than \$90,000 and Ernst & Young has given \$79,000.

Times staff writer Dan Morain contributed to this report.



Associated Press

**LAWMAKER:**  
Rudy Bermudez supports easing rules on out-of-state accountants.

Los Angeles Times  
**latimes.com.**

Need to get to LAX

<http://www.latimes.com/business/la-fi-enron20jun20,1,7082424.story?coll=la-headlines-business>  
*From the Los Angeles Times*

## State Lawmakers Seek Compromise on Accounting Bill

The measure would roll back consumer protections imposed in the post-Enron era.

By Peter Nicholas  
Times Staff Writer

June 20, 2006

SACRAMENTO — A state Senate committee Monday abruptly canceled a hearing on a bill that would roll back taxpayer protections put in place after Enron Corp.'s collapse so that the opposing sides would have a chance to settle their differences.

The hearing was supposed to have taken up a bill by Assemblyman Rudy Bermudez (D-Norwalk) that would allow out-of-state accountants to perform unspecified "tax services" in California without notifying the regulatory board that oversees the industry.

The bill has already passed the Assembly.

Consumer watchdog groups, state Atty. Gen. Bill Lockyer and some lawmakers warn that if the bill passes, it could invite accounting firms to market dubious tax shelters without proper oversight.

Accounting firms and trade associations, which are backing the bill, have contributed thousands of dollars to both Bermudez and Gov. Arnold Schwarzenegger, who appoints members of the state Board of Accountancy. The board has also taken a position in favor of the bill.

Enron's 2001 collapse, partly caused by questionable accounting practices, spurred the state to tighten the regulations.

After the Senate committee adjourned, watchdog groups and accounting industry lobbyists walked to Bermudez's office to see if they could reach a compromise.

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<http://www.latimes.com/business/la-fi-enron21jun21,1,7541178.story>  
*From the Los Angeles Times*

## **Accounting Industry Loses Bid to Relax Rule**

By Peter Nicholas  
Times Staff Writer

June 21, 2006

**SACRAMENTO** — In what some watchdog groups are calling a victory for California consumers, the accounting industry and its legislative allies have abandoned an attempt to roll back protections put in place after the collapse of Enron Corp.

State Sen. Liz Figueroa (D-Fremont) said Tuesday that a bill that had been moving swiftly through the Legislature would be stripped of a provision that would have opened the door for out-of-state accountants to offer tax shelters and practice in California without the oversight now required.

Figueroa is chairwoman of the Business, Professions and Economic Development Committee, which was to hold a hearing on the bill Monday. That hearing was canceled so that both sides could settle their differences — a negotiation that ended Tuesday morning.

"It's dead," Figueroa said of the proposal. "I explained to them [proponents of the bill] that this was not acceptable. I would not allow that to come out of my committee."

Until recently, the bill, sponsored by a trade group that represents California accountants, appeared a lock for passage. The Assembly approved it last month by a vote of 68 to 4.

As first put forward, the bill would have allowed out-of-state accountants to practice or provide unspecified tax services without a permit or any kind of notice to California regulators.

It was supported by the Board of Accountancy, a state panel that licenses and regulates California's 75,000 accountants. A plurality of the board's 15 members are appointees of Gov. Arnold Schwarzenegger.

Watchdog groups contend that the board has been steadily undoing consumer protections enacted after Enron's 2001 collapse — partly caused by questionable accounting practices — while taking positions favorable to the industry it oversees.

The bill's author, Assemblyman Rudy Bermudez (D-Norwalk), said he did not intend to jeopardize consumer protections.

"It's a work in progress," he said. "We've worked very hard to carve out a piece of legislation that helps consumers, helps the industry and provides greater services for Californians overall."

Julie D'Angelo Fellmeth, administrative director of the Center for Public Interest Law at the University of San Diego's law school, said she was pleased that the provision had been dropped.

"Obviously I'm delighted," Fellmeth said. "But for the life of me, I still cannot understand why the Board of Accountancy, whose paramount priority is public protection, would support this rollback of basic protections without scrutinizing it more carefully."

Under the agreement reached Tuesday, out-of-state accountants would be required to apply for a permit if they wanted to practice in California.

That means they would need to fill out a four-page form in which they must reveal whether they had been convicted of a crime, investigated or disciplined for their conduct in their home state.

The revised bill will also instruct the accounting board to examine whether the state's \$100 permit fee is too high.

The legislation is to go before Figueroa's committee for a hearing next week.

If you want other stories on this topic, search the Archives at [latimes.com/archives](http://latimes.com/archives).

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PARTNERS:



**EXHIBIT B**

**BILL LOCKYER**  
Attorney General

*State of California*  
**DEPARTMENT OF JUSTICE**

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May 22, 2006

The Honorable Rudy Bermudez  
California State Assembly  
Sacramento, CA 95814

RE: Oppose Unless Amended, Assembly Bill 1868, as Amended on April 18, 2006

Dear Assembly Member Bermudez:

The Office of the Attorney General must respectfully oppose AB 1868 unless it is amended. We have followed closely the genesis of the changes made by this measure and believe one particular change is ill advised and should be deleted.

The problematic aspect of this measure is the expansion of Business and Professions Code Section 5054(a) until January 1, 2011 to permit both out-of-state accountants and accounting firms who do not physically enter the state to practice accountancy, do not solicit California clients, and do not assert or imply licensure in California, to provide "tax services" to California businesses and consumers without a California license, practice privilege or prior notice to the California Board of Accountancy (CBA).

We recognize that proposed Section 5054 (b) provides that the CBA may by regulation, limit the nature and quantity of tax services provided under Section 5054(a). Our concern is that this measure, with respect to tax services, places the cart before the horse by neither defining, nor comprehensively examining the nature and scope of the term "tax services" to be provided by such a change prior to authorizing such a practice.

This measure will allow all out-of-state CPAs to provide all types of "tax services" with no California license, no California practice privilege, and no notice to the California Board of Accountancy. "Tax services" may be interpreted in a broad manner to include services which will increase the likelihood of causing harm to California consumers. Since neither a license nor a practice privilege would be required, the responsible licensing board, the California Board of

The Honorable Rudy Bermudez

May 22, 2006

Page 2

Accountancy, will have no ability to deny a request to practice before the harm is done to a California consumer.

For all of the above reasons, the Office of the Attorney General must oppose this measure unless it is amended. If you have questions or would like to discuss our concerns, please do not hesitate to contact our office.

Sincerely,

STEVEN M. GEVERCER  
Deputy Attorney General

For BILL LOCKYER  
Attorney General

cc: Committee Chair, Senate Business and Professions Committee  
Committee Vice-Chair, Senate Business and Professions Committee  
Committee Office

# Consumers Union

May 12, 2006

Senator Liz Figueroa, Chair  
Senate Business and Professions Committee  
State Capitol  
Sacramento, CA 95814

Re: AB 1868, Oppose Unless Amended

Dear Senator Figueroa:

Consumers Union, the nonprofit publisher of *Consumer Reports*, opposes AB 1868 unless it is amended to eliminate Section 5, relating to tax services.<sup>1</sup> This provision eliminates, until Jan. 1, 2011, the existing statutory requirement that an out-of-state Certified Public Accountant meeting certain conditions who wishes to engage in acts which are the practice of public accountancy in California by providing tax services must hold either a license or a practice privilege granted by the California Board of Accountancy. The exemption would apply if the out-of-state CPA (and its firm, if unregistered in California) does not physically enter California to practice public accountancy, does not solicit California clients, and does not assert or imply that the CPA or firm is licensed or registered to practice public accountancy in California.

For this group of out-of-state CPAs who do not solicit in or enter California, there would be no requirement to obtain licensure or an alternate form of permission, known as a practice privilege, in order to engage in the practice of public accountancy in California in the form of "tax services." California-based CPAs would continue to need the permission of the licensing body to practice in California, but out-of-state CPAs who meet these conditions would not. The Board of Accountancy's consumer protection power would apparently be limited to the power to impose a fine or discipline after an act harmful to the public had occurred. It appears that under this bill, the Board would no longer have the statutory authority to keep known "bad apples" from providing California CPA services until after an incident sufficient to warrant discipline has occurred and been proven.

The scope of the "tax services" exemption from licensing and practice privilege is not defined by the bill or other state law. The bill does not define "tax services," nor refer to any other state statute that does so. Existing Business and Professions Code Section 5054 exempts out-of-state CPAs who prepare tax returns for natural persons or their estates. This is a narrow and well defined category. By contrast, "tax services" may involve tax planning advice and tax shelter advice, as well as complex business, charitable, and other returns. There does not appear to be any statutory definition in California of tax services, and yet AB 1868 asks the Legislature to largely deregulate the entry into California-related activities of certain out-of-state CPAs with respect to this undefined category of activities.

**A scheme calling only for discipline after harmful acts is unlikely to be as effective to protect the public as affirmative consent to engage in the practice of public accountancy**

<sup>1</sup> This letter is submitted on behalf of Consumers Union. The author wishes to disclose that she served in her individual capacity as a public member of the California Board of Accountancy during the time period in which the Board adopted its recommendation to the Legislature with respect AB 1868. The positions taken on those issues by the Board, and by this author, are a matter of public record.

West Coast Office

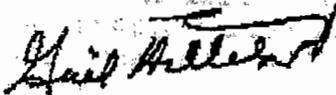
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in California. The bill provides that persons who engage in an act which is the practice of public accountancy in California are subject to the jurisdiction of the California Board of Accountancy, including a restriction or discipline on the right to practice. However, one of the most effective mechanisms a licensing board generally has to deter and sanction bad practices is the denial of a request for a license or other form of privilege to practice. Since that license or privilege will no longer be required, there will be no request for the Board of Accountancy to deny even if the out-of-state CPA is known to have engaged in acts in other states that placed the public at risk. Instead, AB 1868 apparently would let that CPA practice tax services in California under the conditions defined in the bill, and the Board would have to engage in the process of discipline (probably only after an offense in California) in order to protect the California public from more harm in the future.

AB 1868 is a complex measure which addresses a number of the issues that surfaced after the start of the Practice Privilege program in California. The other portions of this bill provide adequate means for the movement of out-of-state CPAs to provide services in California after first receiving an expedited practice privilege from the California Board of Accountancy. The practice privilege mandates reporting of certain prior criminal history, discipline from other states, and the like. This reporting flags areas that require further scrutiny before the privilege to engage in acts which are the practice of public accountancy in California is granted. The additional, and broad, exemption of tax services for certain described out-of-state CPAs lacks these protections. It is unjustified, unnecessary and harmful.

For these reasons, Consumers Union opposes AB 1868 unless amended to remove Section 5 of the bill.

Very truly yours,



Gail Hillebrand

Cc: Assembly Member Rudy Bermudez

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# California State Senate

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SENATE COMMITTEE ON BUSINESS,  
PROFESSIONS AND ECONOMIC  
DEVELOPMENT

SENATE COMMITTEE ON GOVERNMENT  
MODERNIZATION, EFFICIENCY, AND  
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COMMISSIONS AND CONSUMER  
PROTECTION

MEMBER:  
BANKING, FINANCE AND INSURANCE  
ENVIRONMENTAL QUALITY

HEALTH  
JUDICIARY

May 18, 2006

Honorable Arnold Schwarzenegger  
Governor, State of California  
State Capitol  
Sacramento, California 95814

RE: Appointment to the California Board of Accountancy

Dear Governor Schwarzenegger:

Recent developments at the California Board of Accountancy (CBA) have raised some very serious issues for me. Your May 10th appointment of Mr. Marcus McDaniel to the CBA comes at a time when the CBA appears to be moving away from consumer protection and toward protection of the industry it regulates. I wanted to share with you some of the context in which this appointment has occurred, and with all due respect, urge you to reconsider your recent public member appointment.

As you may be aware, Mr. McDaniel was recently appointed as a public member of the CBA, replacing Gail Hillebrand of Consumers Union, whose term expired. I am happy to say that the importance of public members on consumer boards is an issue that both parties have broad-based agreement on. While industry expertise is invaluable on regulatory boards, we have had bipartisan support for many years on the importance of balancing that expertise with public members. The reason for this is quite clear; too much influence from members of the regulated industry can lead a state board to favor the interests of its licensees over those of the consumers the board is supposed to protect.

This was at the forefront of my efforts several years ago to reconfigure the composition of the CBA to give it a public member majority. This came in the wake of the Arthur Andersen, Enron, and WorldCom accounting fraud scandals which robbed many millions of Americans of their pensions and savings. At the time, the CBA had a majority of members from the industry itself. The perception was unmistakable, both in California and across the nation, that an industry's self-interest was a key problem leading to the scandals.

COUNTIES OF ALAMEDA AND SANTA CLARA

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Therefore, we amended Section 5000 of the Business and Professions Code to assure it has a public member majority. Another change, the amendment of Section 450.5 of the Business and Professions Code, also was intended to ensure that all members appointed to CBA and other occupational licensing boards are truly independent of the profession they regulate. This provision provides that the public member shall not have provided within the past five years representation in any capacity to the industry or the profession in which the board regulates. This change was made to deal directly with another problem we had seen developing which was public members who had left a law firm for only a short time, but during the time of employment at the firm had been directly involved in representing the accountancy profession.

As your press release acknowledged, your new appointee, Mr. McDaniel, is a partner in the law firm of Latham & Watkins. The firm, itself, is well-respected both in California and nationally. However, a good part of that reputation comes from its representation of some of the largest accounting firms in the world - including the "Big Four," which are among the CBA's-regulated entities. In fact, Latham & Watkins has represented the Big Four accounting firms in matters before the Board of Accountancy itself. In addition, Latham & Watkins is listed as counsel of record for one of the Big Four firms in numerous published decisions, including the following:

- *Ferris, Baker Watts, Inc. v. Ernst & Young, LLP*, 395 F.3d 851 (January 21, 2005) --- representing Ernst & Young.
- *Richard Rosenblatt v. Ernst & Young, LLP*, 28 Fed. Appx. 731 (Jan. 29, 2002) --- representing Ernst & Young.
- *McGann, et al. v. Ernst & Young, LLP*, 102 F.3d 390 (Sept. 9, 1996) --- representing Ernst & Young.
- *Cooper, et al. v. Deloitte & Touche*, 137 F.3d 616 (Aug. 8, 1997) --- representing Deloitte & Touche.
- *In re Conseco Life Insurance Co. Cost of Ins. Litig*, 2005 U.S. Dist. LEXIS 32375 (April 13, 2005) - representing Pricewaterhouse Coopers.
- *Auto Services Co. v. KPMG*, 2006 U.S. Dist LEXIS 23982 (2006) -- representing Deloitte & Touche.
- *Title v. Enron Corporation (In re Enron Corporate Securities)*, 228 F.R.D. 541 (2005) - representing Arthur Andersen.
- *Newby v. Enron Corporation*, 443 F.3d 416 (Mar. 16, 2006) - representing Arthur Andersen.

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- *Garbini v. Protection One Inc.*, 49 Fed. Appx. 169 (Oct. 23, 2002) -- representing Arthur Andersen.
- *In re Resorts International*, 372 F.3d 154 (June 22, 2004) -- representing Pricewaterhouse Coopers.
- *DSAM Global Value Fund v. Altris Software, Inc. and Pricewaterhouse Coopers*, 288 F.3d 385 (Apr. 19, 2002) -- representing Pricewaterhouse Coopers.

These many decisions were the result of just a cursory search; many others exist. As a partner in the firm, Mr. McDaniel certainly will, and could in the future, earn money from his firm's representation of these accounting firms. And, of course, there is the very real possibility that Latham & Watkins will again have occasion to represent one or more of those firms before the Board in which Mr. McDaniel will serve as a member. Since the CBA has not formalized specific ethical requirements for its members, Mr. McDaniel would not necessarily be required to recuse himself from any such decision that came before the CBA, though I cannot imagine him participating in any decision that involved his firm.

However, a larger problem exists. In March of 2002, Latham & Watkins wrote a lengthy legal letter to the CBA in which it took the position that the Board's regulation of an auditor's independence was preempted by federal law. (I have included a copy of this letter for your review.) This is a point that simply cannot be understated. The firm that Mr. McDaniel works for has publicly stated that federal law preempts important parts of the CBA's mandate.

This, of course, goes far beyond any individual case, and implicates the state's entire ability to regulate the profession. I believe that the firm's legal analysis is quite wrong since both Legislative Counsel and the California Attorney General have concluded that state law is not preempted by federal law in this area. In any event, if the CBA's jurisdiction were to be challenged in court -- and this is not at all out of the question -- such a challenge must now include mention of the fact that a member of the CBA works for a firm that has publicly challenged the CBA's very authority. This would be in addition to the fact that Mr. McDaniel replaces the only public member of the board whose reputation and experience are unquestionably devoted solely to the protection of consumers. No other member of the CBA now has a resume that is untainted by industry interest the way that Ms. Hillebrand had.

I bring this up, not to impugn Mr. McDaniel, or other public members of the CBA, but to emphasize the context of his appointment. The reputation of the CBA as a consumer board, independent of the industry it regulates, is now directly at issue. While I am deeply troubled by a number of positions the CBA has taken recently, I was most profoundly distressed when the CBA adopted a position related to practice by out-of-state CPAs with California clients. I had originally agreed to carry a bill for the CBA to give

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them three years to come up with a solution to some quite vexing problems in this area. But the CBA insisted - at the behest of the Big Four accounting firms - that a provision be included that would permit out-of-state CPAs, and even non-licensees, to provide "tax services" for their clients without registering with the CBA, or even notifying the Board that they are providing this type of tax-related work in our state. The Big Four sought another author, and the bill, AB 1868, is now being sponsored by the very industry that CBA regulates. In effect, the CBA has relinquished its control over its own measure. This is exactly the sort of complicity between the CBA and the industry that undermines the Board's credibility. The only CBA member who even questioned this abdication of the CBA's responsibility was Ms. Hillebrand.

Far more important to me, personally, is the CBA's extremely weak justification for this position. As repeated several times over a number of board meetings, the industry claims, and the CBA acquiesces, that enforcement after the fact will solve any possible problems from this open-ended permission for non-licensees to practice without the CBA's knowledge.

I cannot state this firmly enough. The CBA has the smallest and least well-staffed enforcement division of any comparably sized board in this state. This is an ongoing and enormous problem that is only made worse as each new accounting scandal moves into the headlines. The accounting profession is - of all professions - at the very heart of California's economy. If markets - and consumers - cannot have faith that a company's books are being reviewed by truly independent professionals whose loyalty is to accuracy, and not to the companies they are reviewing, the entire basis of our economy is undermined. And we have seen how such industry self-dealing can, in fact, lead directly to the collapse of enormous companies whose fall affects millions of people. Faith in CPAs is absolutely essential to making sure that companies we rely on will not collapse the way Enron, WorldCom and others have.

But the CBA's enforcement division is not even remotely capable of effectively monitoring the large number of licensed entities under the CBA's jurisdiction. Compared with the Medical Board, the State Contractors Licensing Board, the State Bar or others who regulate a large number of licensees, the CBA's enforcement is barely noticeable. Its most recent report shows that for the entire state of California, the CBA has only 143 open enforcement cases. That is for a licensee population that exceeds 70,000. And that does not include the fact that the CBA oversees the four largest accounting firms in the entire country, in addition to its individual licensees and registered CPA firms. No other consumer board has both individual and corporate licensees to oversee. In short, the Board is almost entirely incapable of assuring the public that it has anything near the resources to enforce its existing laws. Arguing that AB 1868's new, quite significant abdication of prior regulatory authority will be effective because the CBA will be able to enforce any violations after the fact makes no sense.

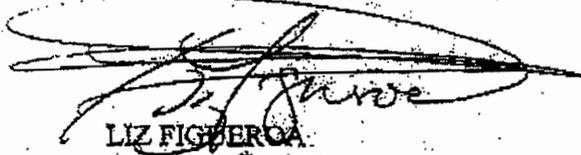
Honorable Arnold Schwarzenegger  
May 18, 2006  
RE: Appointment to the Board of Accountancy  
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It is with these facts in mind that I am so very troubled by the replacement of the last remaining consumer voice on the CBA with an appointee whose law firm both challenges the authority of the CBA, and represents the very largest entities which most need the CBA's direct regulatory attention.

With all due respect to Mr. McDaniel, it is my belief that his appointment to a public member slot on the CBA exacerbates the Board's extremely serious credibility problems, and undermines the public's ability to view the CBA as a consumer protecting regulator.

I hope we can work together, as we have with other consumer boards, to assure that public members who are appointed to the CBA will not have - or be seen to have - reason to favor the industry in which CBA is primarily responsible to regulate.

Sincerely,



LIZ FIGUEROA  
Senator, 10<sup>th</sup> District

cc: Honorable Senate President pro Tem Don Perata  
Honorable Senate Republican Leader Dick Ackerman  
Honorable Assembly Speaker Fabian Nuñez  
Honorable Assembly Republican Leader George Plescia  
Ron Blanc, President, California Board of Accountancy

**EXHIBIT C**

*Practice privilege: out-of-state CPAs must register with CBA as of Jan. 1, 2006;  
governmentrelations California CPA October 1, 2005*

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ASAP

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California CPA

October 1, 2005

**SECTION:** Pg. 35(1) Vol. 74 No. 4 ISSN: 1530-4035

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**LENGTH:** 855 words

**HEADLINE:** Practice privilege: out-of-state CPAs must register with CBA as of Jan. 1, 2006;  
governmentrelations

**BYLINE:** Allen, Bruce C.

**BODY:**

In January 2006, a new law goes into effect in California that requires out-of-state CPAs who want to provide services to California residents to file for a practice privilege permit with the California Board of Accountancy and pay a registration fee of \$100 for the one-year permit.

[ILLUSTRATION OMITTED]

The permit will be available online at [www.dca.ca.gov/cba](http://www.dca.ca.gov/cba). The registration form is required of any out-of-state CPA prior to rendering services in California. Additionally, the CBA also is requiring that CPAs who prepare business tax returns for California residents file with them prior to undertaking the assignment.

Recent legislation will exempt CPAs, who prepare a small number of personal or estate tax returns, from the registration requirement.

Easier, Not Harder

In taking this action, California becomes one of 23 states that already have adopted a registration requirement for out-of-state CPAs providing services to their residents. As originally envisioned, the practice privilege notification requirement was designed to provide for ease of transition

among states by allowing out-of-state CPAs to provide seamless services across state lines without obtaining a full license in all of the states where they have clients.

California's practice privilege requirement will replace a section of California's Accountancy Act that allowed out-of-state CPAs to provide non-attest services to California clients as long as they were incidental to the practice of accountancy in another state. The CBA found that this old statute was inadequate and difficult to enforce since practitioners' definitions of "incidental" varied tremendously.

The new practice privilege will provide the CBA with increased opportunity to protect California consumers by letting them know who is practicing in California and provide them with an expedited method of bringing discipline against out-of-state CPAs who may run afoul of the law. Those applying for a practice privilege permit have to agree to abide by California's rules for professional services and to the CBA's authority.

#### Exemption for Some

Recent legislation, SB 229 (Figueroa), gives the CBA authority to exempt CPAs who file a small number of personal or estate state tax returns from the requirement to obtain a practice privilege. The exact number of personal and estate tax returns is to be determined by the CBA during the regulatory process.

The CBA has repeatedly refused to exempt tax practice from the notification requirement as tax practitioners can cause tremendous consumer harm. In fact, CBA has had difficulty with CPAs licensed in bordering states that have substantial tax practices in California.

#### Outside of California

CPAs who provide services, including tax preparation and planning, to residents and business located in other states are encouraged to contact those states to determine if they will be required to file a practice privilege notification with that state.

At this time there is no central repository for information on other state's requirements. CalCPA has encouraged the CBA to develop information or see that the National Association of State Boards of Accountancy develops information that can assist CPAs in complying with the requirement.

The National Association of State Boards of Accountancy is working on developing a website that would clarify each state's requirements. In the interim, the best site is [www2.state.id.us/boa/html/states.ht](http://www2.state.id.us/boa/html/states.ht)

California CPAs are encouraged to find out what the requirements of other states are to ensure that they are in compliance with any registration or licensing requirements in those states prior to rendering services to residents of other states.

#### New Member for CBA

Gov. Schwarzenegger has appointed W. R. "Bill" MacAloney to the California Board of Accountancy. MacAloney is founder, president and CEO of Jax Markets, a small chain of grocery stores based in Anaheim.

MacAloney has been active in the California Grocers Association the Villa Park City Council and served as mayor of Villa Park for several years.

MacAloney replaced Ian Thomas, a Gray Davis appointee, who resigned from the CBA when his term expired in November 2004.

MacAloney will serve through November 2008 and will be eligible for reappointment.

#### Reportable Events: Non-CPA Owners

In addition to providing practice privilege relief, SB 229 would require that non-CPA owners of CPA firms be subject to the reportable events standards applicable to CPAs.

This would include being required to notify the CBA within 30 days if they have had a judgment or arbitration award of more than \$30,000 entered against them in a civil action.

CPAs also are required to report to the CBA if they are the subject of an investigation, inquiry or proceeding by or before a state, federal or local court or agency, including the Public Company Accounting Oversight Board, involving conduct related to services provided by them.

SB 229 passed the Legislature and in mid-September was awaiting the governor's signature.

For updates on SB 229 and other legislation, access Capitol Track at [www.calcpa.org/members/gr](http://www.calcpa.org/members/gr).

Bruce C. Allen is CalCPA's director of government relations.

**LOAD-DATE:** December 20, 2005